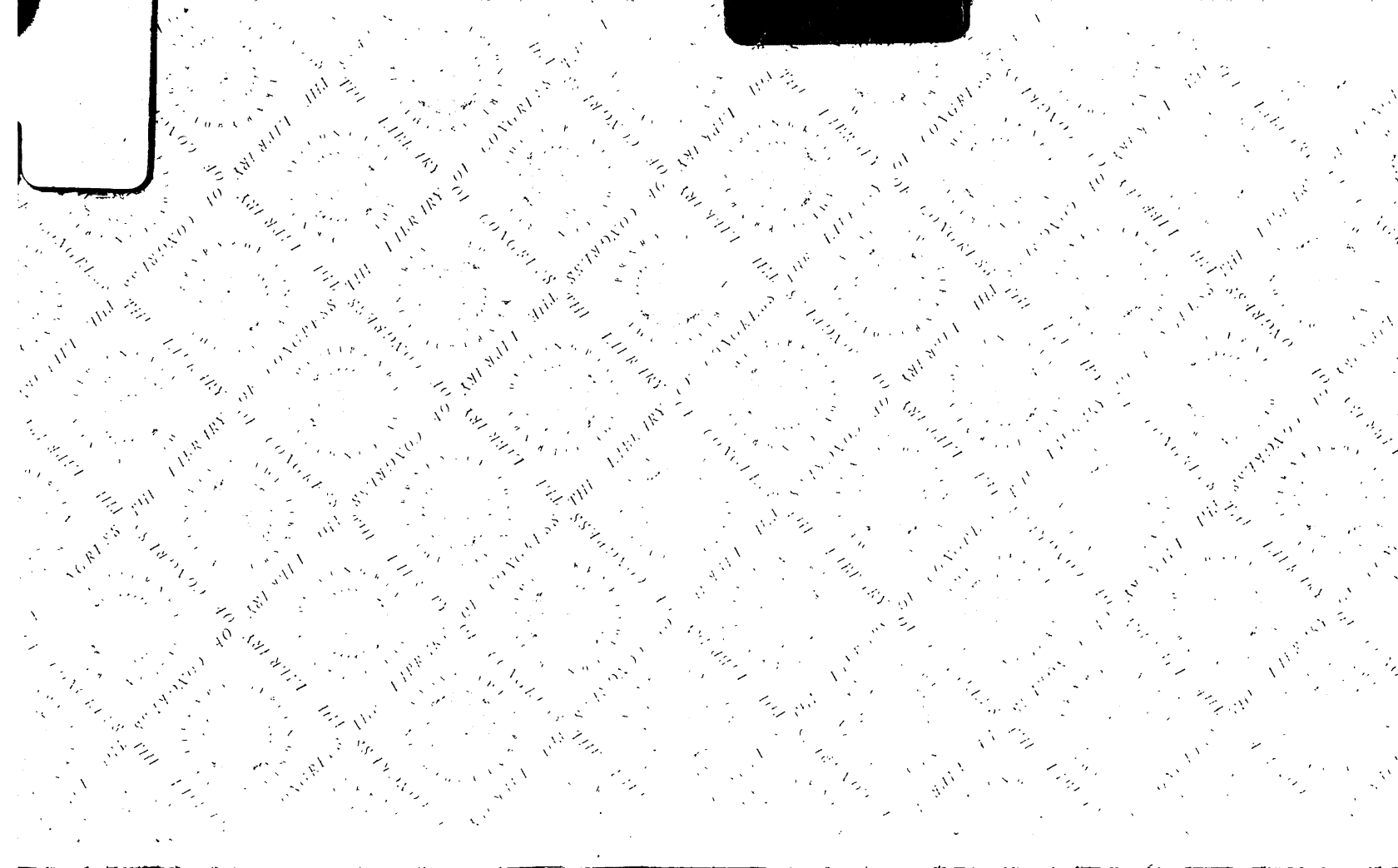

HEARING

BEFORE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES

ON THE BILLS

H. R. 4438, H. R. 16676, and H. R. 18671,

TO LIMIT THE HOURS OF SERVICE
OF RAILROAD EMPLOYEES

WASHINGTON
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1906

HOURS OF SERVICE OF RAILROAD EMPLOYEES.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Friday, April 20, 1906.

The committee met at 10.45 o'clock a. m., Hon. William P. Hepburn (chairman) in the chair.

The CHAIRMAN. The committee will be in order. The special order is the consideration of two bills, Nos. 4438 and 16676, relating to the limiting of hours of labor of railroad employees. These two bills are before the committee now. Is there any gentleman who wants to be heard?

Mr. NORRIS. Mr. Fuller is here, who has another engagement, and if it is satisfactory to the committee I will give way and let Mr. Fuller be heard first, because, like the poor, you have me with you always and you can not always have him.

The CHAIRMAN. Mr. Fuller, we will hear you.

STATEMENT OF MR. H. R. FULLER.

Mr. FULLER. I thank you very much, Mr. Norris. I wish to speak briefly in support of House bill 16676, the purpose of which is to prevent railroad companies engaged in interstate commerce from working their employees excessive hours without rest. That there have been many serious accidents in which lives have been lost as the result of men working excessive hours I do not think will be seriously questioned. That being true, the question which confronts us is, How to prevent them in the future? The men I represent wish to do this.

Mr. ESCH. Whom do you represent?

Mr. FULLER. I represent the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen, the Order of Railway Conductors, and the Brotherhood of Railroad Trainmen.

Mr. BARTLETT. Those organizations embrace about all the railroad employees who are engaged in running trains?

Mr. FULLER. That is, that this bill would directly affect.

Mr. BARTLETT. You represent all the men engaged in running the trains—the employees?

Mr. FULLER. Yes, sir. We approach this question with caution, and I say that for the benefit of the committee. We realize that it is a somewhat difficult thing to really protect life and limb as it should be protected by limiting the hours of service, and at the same time not take into consideration the conditions which surround the service of railroad employees, also the question of delay to both

passengers and property, and it is after a great deal of consideration that we submit this proposition to you.

Our organizations have in the past tried to meet this question, both in the way of agreements with the railroad companies themselves to the effect that men would not be required to work excessive hours without rest and also with efforts at State legislation. We have written agreements with most of the railroad managements of the country which provide that after men engaged in train service have worked a certain number of hours, generally sixteen, they shall be entitled to a certain number of hours for rest, generally a minimum of eight hours. I have here a list of the roads with which we have those agreements. This list is taken from a book of schedules of the wages and other conditions of employment on the various railroads of the country, which was compiled by two of the organizations I represent, and it contains the official wage schedules, which have the signatures of the representatives of our organizations, as well as those of the railroad officials themselves, so it is as authentic as anything possibly can be on that point. I will not take time to read them unless the committee wish me to do so.

Mr. RICHARDSON. Let me ask you one question, for information. Is it not true that engineers on the railroads are not paid a fixed salary, but that their pay is a variable salary that they get according to the pay for mileage, according to the number of miles that they run?

Mr. FULLER. There are some of them paid by the month; but it is also agreed that a certain number of miles shall be considered a month, so that it is really a mileage basis.

Mr. RICHARDSON. And they are paid according to the number of miles that they run?

Mr. FULLER. Yes, sir.

Mr. RICHARDSON. That is what I understood.

Mr. FULLER. Yes.

Mr. GAINES. Is it not really an hour basis—by the hour?

Mr. FULLER. In some places it is on an hourly or daily basis. On most of the railroads it is on a mileage basis, especially west of the Missouri River. In the eastern part of the country, where the traffic is more dense and where it is harder to strike a fair proposition from a mileage standpoint, it is based upon days or hours. There are some roads which have it on an hourly basis and a mileage basis also. For instance, on these roads which are on a mileage basis, 100 miles, it is provided, shall be considered a day, and if they do not make that in ten hours, then they get overtime for all over ten hours.

I have here also a table of the State laws.

Mr. MANN. Did you give the substance of those contracts that you said you had there?

Mr. FULLER. I will append these to the record. This table shows the name of the road and the number of hours the men work before they are entitled to rest and the number of hours allowed for rest.

Mr. MANN. What are those—some of them?

Mr. FULLER. That is, the names of the roads?

Mr. MANN. The name of the road and the number of hours' rest, etc., in one specific case.

Mr. FULLER. Here is the Alabama Southern first. They can not work their men over twelve hours, according to their agreement, without eight hours' rest.

On the Atlantic, Knoxville and Northern conductors work twelve hours or more and have eight hours' rest. On the Baltimore and Ohio the maximum is sixteen hours with eight hours' rest.

On the Buffalo, Rochester and Pittsburg it is sixteen hours and eight hours' rest. There are about three pages of this list.

Mr. MANN. You might pick out and give us a few of the larger roads.

Mr. BARTLETT. How about the Pennsylvania Railroad?

Mr. FULLER. With the Pennsylvania, unfortunately, we have no written agreement.

Mr. NORRIS. Have you the Chicago, Burlington and Quincy?

Mr. FULLER. No; I have not; but here is the Burlington, Cedar Rapids and Northern. It is sixteen and eight.

Here is the Great Northern—fourteen hours and eight hours' rest.

The Illinois Central has sixteen hours' work and eight hours' rest.

The International and Great Northern has sixteen hours and eight hours' rest.

The Louisville and Nashville is sixteen hours and eight hours' rest.

The Michigan Central is sixteen hours and eight hours.

The Missouri Pacific is sixteen hours and eight hours.

The Missouri Pacific, St. Louis and Iron Mountain is sixteen hours and eight hours.

The Northern Pacific is sixteen hours and eight hours.

The Omaha, Kansas City and Eastern allows the men to judge for themselves what the maximum shall be, and they are allowed eight hours' rest.

Table showing the maximum number of hours trainmen are required to work without rest, and the number of hours allowed for rest, according to written agreements between the railroad managements and the employees.

Name of road.	Number of hours worked before being entitled to rest.	Number of hours allowed for rest.
Alabama and Southern	12 hours and completed runs	8 hours.
Atlantic, Knoxville and Northern	Conductors, 12 hours	Do.
Baltimore and Ohio	16 hours	Do.
Buffalo, Rochester and Pittsburg	do	Do.
Burlington, Cedar Rapids and Northern	do	10 hours.
Central Vermont	do	8 hours.
Chicago and Grand Trunk	do	Do.
Chicago, Milwaukee and St. Paul	Men to judge of their own condition.	
Chicago and North-Western		Do.
Chicago, St. Paul, Minneapolis and Omaha		Do.
Cincinnati, New Orleans and Texas Pacific	16 hours	Do.
Cleveland, Cincinnati, Chicago and St. Louis	do	Do.
Cleveland Terminal and Valley	do	Do.
Colorado Midland Co	Men to judge for themselves	Do.
Colorado and Southern	16 hours	Do.
Denver and Rio Grande	Not required to go when they claim they need rest.	
Duluth and Iron Range		7 hours.
Duluth, Missabe and Northern		8 hours.
Duluth, South Shore and Atlantic		9 hours.
Erie	16 hours	8 hours.
Florence and Cripple Creek	Not required to go out when they need rest.	
Georgia Southern	12 hours	Do.
Grand Trunk	16 hours	Do.
Great Northern	14 hours	Do.
Gulf, Colorado and Santa Fe	16 hours	Do.
Houston and Texas Central	do	Do.
Illinois Central	do	Do.
International and Great Northern	do	Do.
Kansas, City Fort Scott and Memphis	do	Do.
Kansas City, Memphis and Birmingham	Conductors 16 hours	Do.
Kansas City, Pittsburg and Gulf	16 hours	Do.

Table showing the maximum number of hours trainmen are required to work without rest, and the number of hours allowed for rest, etc.—Continued.

Name of road.	Number of hours worked before being entitled to rest.	Number of hours allowed for rest.
Louisville, Evansville and St. Louis	18 hours	8 hours.
Louisville and Nashville	16 hours	
Michigan Central	do	Do.
Minneapolis, St. Paul and Sault Ste. Marie		Do.
Missouri Pacific	do	Do.
Missouri Pacific, St. Louis and Iron Mountain	do	Do.
Montana Central	14 hours	10 hours.
New Orleans and Northeastern	16 hours	8 hours.
New York, Chicago and St. Louis	do	Do.
New York, Ontario and Western	do	Do.
Norfolk and Western		10 hours.
Northern Pacific	16 hours	8 hours.
Ohio Southern	do	Do.
Omaha, Kansas City and Eastern	Men to judge for themselves	Do.
Oregon Railroad and Navigation Co	16 hours	Do.
Oregon Short Line	do	Do.
Pere Marquette	12 hours	Do.
Pittsburg, Bessemer and Lake Erie	16 hours	Do.
Pittsburg and Lake Erie	do	Do.
Pittsburg and Western	do	Do.
Rio Grande and Southern	Not required to go out when they claim they need rest.	
San Francisco and San Joaquin Valley	16 hours	Do.
Santa Fe	do	Do.
Southern	18 hours	10 hours.
Southern California	16 hours	8 hours.
Southern Pacific	do	Do.
St. Joseph and Grand Island		Do.
St. Louis and San Francisco	16 hours	Do.
St. Louis Southwestern	do	
Texas Pacific	20 hours	Do.
Toledo and Ohio Central	16 hours	Do.
Union Pacific	do	Do.
Wabash	do	Do.
Wisconsin Central	Men to judge for themselves	Do.
Yazoo and Mississippi Valley	Conductors, 16 hours	Do.

I also have here a leaf taken from the "Rest register" of the Chicago and North-Western road, which shows the rest allowance rule of that company. This rule was, I understand, adopted since the agreement from which I quoted was made.

[Minimum rest allowance rule: 10 hours or less on duty, 8 hours rest; 12 hours on duty, 10 hours rest; 14 hours or more on duty, 12 hours rest.]

Chicago and North-Western Railway Company.

Rest register, ——— station.

Date.	No. or kind of train.	Where from.	Hours on duty.	Times of arrival.	Engineer or conductor.	Fireman or brakeman	Brakeman.	Time called.

Table of the State laws, showing the maximum number of hours above which trainmen or enginemen should not be required to work, and the minimum number of hours allowed for rest.

State.	Maximum time above which employees shall not be required to work without rest.	Amount of time allowed for rest.
Arizona	16 hours	9 hours.
Arkansas	do	8 hours.
Colorado	do	10 hours.
Florida	13 hours	8 hours.
Georgia	do	10 hours.
Indiana	16 hours	8 hours.
Michigan	24 hours	Do.
Minnesota	Other than engineers and firemen, 20 hours	Other than engineers and firemen, 8 hours.
	Engineers and firemen, 14 hours	Engineers and firemen, 9 hours.
Nebraska	18 hours	8 hours.
New York	24 hours	Do.
Ohio	15 hours	Do.
Texas	16 hours	Do.

The CHAIRMAN. You named one company there whose contract contained the provision that the men were to determine for themselves what the hours of labor should be, and the hours of rest. Now, in that case, what did they determine upon?

Mr. FULLER. I could not say as to what they determined on. You would have to be acquainted with each particular case. In some cases the men would demand rest, probably, when they had worked sixteen hours, and in some cases less, and in other cases they might not demand any; and I was going to touch upon the fact that there are some men who want to work excessive hours and are willing to endanger not only their own lives, but the lives of their fellow-workmen and the lives of the public in order to increase their earnings.

Mr. MANN. What is the practical operation of that sixteen-hour basis?

Mr. FULLER. The practical operation?

Mr. MANN. Yes.

Mr. FULLER. I was going to get to that.

Mr. MANN. Very well.

Mr. WANGER. Does not the desire to work overtime often arise from the desire to have longer hours off at home?

Mr. FULLER. That is true.

Mr. WANGER. Instead of spending the night at some other town?

Mr. FULLER. Yes, sir; that is true; and I hope that all those conditions will be brought out before the committee, because I do not want you to pass upon this question without having everything connected with it before you.

Mr. RICHARDSON. You say that it was sixteen hours in Alabama and eight hours' rest. Have you ever heard any complaint about that?

Mr. FULL. No, sir; I do not recollect any specific complaint from that road.

Now, I believe these agreements which we have with the managements have done more to keep down excessive hours than have the State laws, for the reason that the State laws have become dead letters through lack of enforcement. There are twelve States which have laws.

Mr. ESCH. There are two more, making fourteen altogether, now.

Mr. FULLER. There are? I did not know that. Thank you.

Mr. ESCH. Kansas and Missouri passed laws last winter.

Mr. FULLER. Now, the maximum in those States runs from twenty-four hours down to thirteen hours—that is the maximum number of hours that the men can be worked—and the hours of rest run from ten down to eight; but I do not know of a State which has one of these laws where it is enforced to-day.

As I say, the agreements have done more than the State laws, because of the failure to enforce the State laws and because of the loopholes in them. But these agreements are not sufficient to properly protect life and limb upon railroads, and we ask this legislation wholly upon that ground, upon the ground of safety; and for this reason: These agreements are disregarded by the managements and disregarded by some of the men. Men with the fear of disfavor in the eyes of their immediate superior officers permit themselves to be worked when they are physically unfit for it. Generally speaking, a man wants to stand as high in the eyes of the man whom he looks to for promotion and advancement in the service as his fellows, and if he refuses to work when that officer wants him to work it may be that the men next in turn who follow him will work. For instance, one man will come in off the road and the next one to follow him is the next to go out, and if the first man that comes in refuses to go because he had not sufficient rest when there was a train to go out, in many cases the fellow that follows him would submit and go out.

Now, the first fellow knows that, and he permits himself to be pressed into the service as a result of that condition when he knows conscientiously that he ought not to work. Now we, the men that I represent here, want to shoulder our part of the responsibility for this condition, and we want the railroads, of course, to shoulder theirs. And here is a condition which exists.

There are some men, although they are not in the majority, who, as I said, are willing to risk the safety of their own lives and limbs and those of the traveling public in order to increase their earnings, and they go out when they know they are physically unfit for it, and when they ought to be at home and in bed. This has a demoralizing effect upon the service on account of the influence it has on the other fellow whose conscience dictates to him that he is really doing something wrong when he goes out when he is not fit for it.

The crew dispatcher, who is the man who has immediate charge of these men, wants men who are always ready to work, and that class of men get his smiles, naturally. The crew dispatcher has a trick to work, and it may be one of eight hours or twelve hours, and during his trick he wants his end of the business to be kept going just as well as the machinery end, and when the roundhouse foreman turns out the power—the engines—to move the traffic, and there is any delay on account of men not having sufficient rest, the crew dispatcher has got to account for that. Now, he wants things to go without a hitch, and I am not attaching any particular blame to him. It is a result of conditions. He wants to keep the human end of it going just as well as the machinery end. That has a bad effect on the service; and the result is that these agreements are habitually violated; they are not lived up to; they are disregarded by both the companies and some of the men.

Mr. MANN. Is that caused by a lack of number of employees?

Mr. FULLER. Well, it may be in some cases; yes, sir; that is true.

Mr. MANN. If there were more employees would there be the same temptation, or is it because the employees are not handy to go out at once?

Mr. FULLER. Of course the more men they have the less hours they will have to work apiece; but many times it is a result of mismanagement.

Mr. BARTLETT. And also some employees are more prompt to attend to their duties; that is, they would be on hand to go, and others would not be?

Mr. FULLER. They are all compelled, as a matter of discipline, to be prompt. That question does not figure so much.

Mr. BARTLETT. It does not?

Mr. FULLER. No, sir. If a man is not entitled to the rest under the agreement he has got to get around or answer for it. If the caller goes after a railroad man and he is not ready to respond to duty he is disciplined, unless he has not had a sufficient amount of rest according to the agreement.

Here is another condition—I am glad that you asked that question, Mr. Mann: I know of one man being killed and two injured as a result of men being forced to go out in this way. The greater number of crews a railroad company has in its service the greater the number of cabooses it has to have, because each crew is assigned a caboose. You take it on a long run, where the trips are long, and a crew may come in, and they are tired out, and the conductor says to the crew dispatcher, "I am going to mark up eight hours for my crew." That is notice that they are going to take that much rest. The dispatcher says, "All right; if you do I will put another crew on your caboose." That meant to that crew that they would not get only eight hours' rest, but that another crew would take their caboose and go off on a long run, and might be gone perhaps for two or three days, and they would lose a lot of time waiting for the caboose to return.

Now, that influence was brought to bear for the purpose of getting those men to go out, because the train dispatcher did not want to go to the trouble to call another crew or to answer for a delay. Those men submitted to that in this case and went out, and on their return trip, when they were within 8 or 10 miles of where they started from, the train came up behind another one and stopped and the flagman and the conductor were sitting up in the cupola of the caboose, and the flagman got down on the floor of the caboose and picked up his white lamp and his red lamp, and the conductor supposed that was sufficient and did not pay any further attention to him, supposing that he was going to attend to his duties. But that flagman, after having done that—having picked up those lamps—actually keeled over on the bunk and went to sleep, and another train came down and ran into that train and killed one man and injured two others.

The CHAIRMAN. How long had that man been at work?

Mr. FULLER. I do not remember the hours, but it was investigated by the coroner's jury. I had a copy of the coroner's verdict in that case, and I submitted it to the Industrial Commission in my testimony. I think they were on duty between thirty and forty hours, somewhere along there.

The general surgeon for that company is a personal friend of mine, and we were talking about the accident one day—we happened to take

dinner at a restaurant together—and he told me that he rode over from the depot to the hospital in the ambulance with the brakeman and flagman, and he said he sat in the seat in front and he could hear the brakeman say to the flagman, "If I die, you are the cause of it; you did not go back and do your duty," and he heard the flagman say that he intended to do it, but he could not remember anything after he picked up his white and red lights.

There is this about it, that man was working directly against nature, and that is a thing we can not successfully do.

A man who is always kicking for rest and insists upon a rigid enforcement of the rule is called a "kicker," and he does not like that.

Mr. MANN. What is the fact? Do the men habitually work sixteen hours?

Mr. FULLER. The case which I cited was on a road which agrees to give the men eight hours' rest after working sixteen hours.

Mr. MANN. You say that they have an agreement for sixteen hours. What is the number of hours that they commonly work? They do not always work sixteen hours, habitually?

Mr. FULLER. Not always, but sixteen hours is small in comparison with the time that they sometimes consume on a trip.

Mr. MANN. Sixteen hours on a caboose, where a brakeman could take a nap in the caboose, would not make it excessive, but it would be very excessive for the engineer.

Mr. FULLER. The service on railroads is becoming more exacting every year. The trains are increasing in size, and there is not much time to sleep on the road, not while the train is running. If a train pulls in on a sidetrack, the men may go to sleep for a little while; but accident is liable to result from men sleeping, even while on a sidetrack. I think a man should not be required to work above a certain number of hours, and that number should be small enough to enable him to give up to the company and the traveling public and himself and fellow-employees the best that his nature provides, and he should not be dead on his feet, going around stupid and liable to go to sleep. Why, these men will sit right down on the railroad tracks and go to sleep! Think of men so badly pushed for sleep as that! Now, it seems almost beyond belief that a man who has been a railroad man for years will absolutely sit down on the track and go to sleep, when he knows that another train is liable to come along and kill him, but they will do it. They would not do that if they were not so pressed for sleep. When a man goes without sleep a certain length of time, he is not responsible for what he does.

Mr. MANN. Of course we all know about what a man can do without sleep. He is on duty for sixteen hours and off duty for eight hours; and the man does not live that can work twelve hours and be off eight hours and go home and eat and get rest and then come back on again for another twelve hours, and keep it up.

Mr. FULLER. It may be that between two trips they would be in off the road for twelve hours, or perhaps twenty-four hours, but in other cases they go out without any rest.

Mr. TOWNSEND. Let me ask you if in any trip or any considerable number of trips that trip could be made in twelve hours?

Mr. FULLER. There are lots of trips made in twelve hours. They do not make as many of them as they did since they have increased the tonnage.

Mr. TOWNSEND. What would you do with the train that took twenty hours to make the trip? Would you have a provision to change the crews in the midst of the trip?

Mr. FULLER. Now, I will tell you about that. We have provided in this bill that all those matters should go before the Interstate Commerce Commission, and we do not seek to lay down the rule here to meet that contingency. That is one of the difficulties; there is no doubt about that. But, as I say, we have approached this matter with caution, and we think we can properly make a start under this bill, and that it will furnish some relief and will not make proper operation of a railroad impossible.

Mr. TOWNSEND. Another question: If you were to change crews instead of compelling the old crew to still continue work, would you in reality impose any additional expense upon the railroad? As I understand it, a crew now that works overtime gets extra pay?

Mr. FULLER. They do.

Mr. TOWNSEND. The proposition is that that extra pay would go to the regular crew after that?

Mr. FULLER. Yes. Generally speaking, it is not a matter of expense. Yes; I know of a road which has a division running each way out of a certain point. For years men were not required to make a round trip over both of these divisions without rest, but recently they have put long runs on, starting at one end of the road and taking a train through over both divisions and return without rest, where previously the men were only required to make a round trip over one division without rest. Now the average time that the men put in on the road in making that trip runs between twenty and twenty-four hours. You see, that is deliberate. It would cost the railroad company no more when that crew brought that train to this central division point to have a new crew there to put right on it and let them take it to the other end of the road. But they say they are obliged to do it as a matter of competition. Those trains carry no perishable freight.

Mr. MANN. What road is this?

Mr. FULLER. I would not care about mentioning any road. It is coke that they carry, and that would not sour even in August.

The men resented that. When they put these runs on they advertised them. The oldest men in the service were entitled to these runs, but the old men would not bid for those runs, and the younger men in the service were compelled to take them.

Mr. MANN. Do they require the engineers to run twenty-four hours?

Mr. FULLER. Yes, sir; engineers and firemen both; they run them right through.

Mr. BARTLETT. Single trips?

Mr. FULLER. Round trips.

Mr. TOWNSEND. I do not understand how that would make it more profitable to the railroad.

Mr. FULLER. It is not more profitable, but they want to save this delay in changing crews at this central point.

Mr. TOWNSEND. How long would that take?

Mr. FULLER. Not over fifteen or twenty minutes.

Mr. MANN. Which takes you the longest time, usually, a through train or a way train?

Mr. FULLER. Going over the road?

Mr. MANN. Which makes the longest time for the men to be in the service, a through train or a way train?

Mr. FULLER. The local freight, as a rule, makes one trip over the road—that is, just one way, and they do that in the daytime. What they call a chain-gang crew, a through freight or rounds crew, go to the other end and come back immediately, and as a general rule they are on the road longer than the way freight. Of course it does not take them, generally speaking, as long to get over the road one way as a way freight, because a way freight stops and switches at various stations. The excessive hours apply more outside of the local freight.

Mr. MANN. Is it not a common thing for the local or way freight to be sidetracked so that it takes more than twelve or fifteen hours to make that run?

Mr. FULLER. They do that. I know of one road where they only run a local freight once a week, and they start out with fifty or sixty cars, and it takes them sometimes two days to go one way over the division.

Mr. MANN. Where it is a common thing for the local freight to be laid out and detained, what would happen in a case of that sort about the length of hours?

Mr. FULLER. They generally go on and complete their trip to the terminal unless the hours are so excessive, say, twenty-four, and they will lie down in the middle of the road, or wherever they can get a man to watch the engine; or where they can not get some one to watch the engine the engineer and the firemen have to sleep and look after the engine too, look after the fire and the water. The crew, of course, can sleep too, but that is not the right kind of rest.

Mr. MANN. You provide to prescribe a maximum number of hours above which the company shall not permit a man to remain on duty. There seems to be no exception to that. What would happen if you had a passenger train that stops and is laid out?

Mr. FULLER. I think that condition would be provided for by the Commission.

Mr. MANN. How could it be under this provision of the bill?

Mr. GAINES. It seems to me that it would not be; but would it not be sufficient to ask Mr. Fuller if he agrees that there should be exceptions?

Mr. FULLER. Yes; there should be. There is no doubt about it. But I want to call attention to this in that connection: The exception provisions are the means of the defeat of the purpose of the present State laws—that and the lack of enforcement, of course.

Mr. ESCH. All the State regulations provide for casualties, do they not?

Mr. FULLER. Yes, sir; and as a result of those provisions the whole purpose of the law is defeated. They go ahead and violate the law. The exceptions to the rule are so great and so many (and contingencies arise, and some of them could be avoided) that they consider that they have got license, and they go ahead, and there is no enforcement of the law.

I want to suggest this, that if Congress was going to provide the contingencies to vary from the rule, then Congress should lay down the rule as to the number of hours itself. That is the reason we did

not ask Congress to do that. We were going to allow the Commission to provide for the contingencies.

Mr. MANN. But you do not leave it with the Commission.

Mr. FULLER. It was our intention to; and if the bill is so tight that they could not, it should be amended so that they can.

Mr. MANN. There are two ways in which railroad employees can be worked too long: First, by having too long regular runs, which necessarily and ordinarily take more than the proper number of hours; and second, by sending out men after they have come in off of another trip.

Mr. FULLER. Yes, sir; but it is not always the length of the runs: but the locomotives are loaded above their real capacity, and where trains used to go over a road in twelve hours it now takes from eighteen to twenty hours. The whole tendency lately has been to increase the tonnage to the fullest extent, and that causes delay.

Mr. MANN. Is it your primary purpose to require the railroads to shorten the length of the trips, or to prevent the trainmaster, or whoever has charge of it——

Mr. BARTLETT. The train dispatcher.

Mr. MANN. Not the train dispatcher—from sending out a crew when they ought to be in and resting?

Mr. FULLER. Our purpose is to prevent these excessive hours; and we will not dictate how they should do it. But in my opinion the shortening of the run is the best way, because that gives men more time at home. The shorter a man's run is from the terminal, the easier it is for him to get home, and we must all admit that the home is the proper place for a man to rest and to put in his spare time, both from a physical and a moral standpoint. We would rather see it done that way. But the main thing is to protect the lives of those people who are employed on the railroads and of the people who travel over them.

Mr. BARTLETT. What do you mean, in the last section, next to the last line, by the words "proximity to trains?" What do you mean by that, if you please, operating "in connection with or proximity to trains?"

Mr. FULLER. We put that in there to meet this contingency. Congress can legislate as to interstate commerce.

Mr. BARTLETT. Yes; I understand that. I understand what you mean by "in connection with," but I want to know what you mean by "proximity to?"

Mr. FULLER. For instance, here is a railroad. One train is loaded with interstate commerce. Another one is loaded with State commerce. The train bearing the State commerce is within sufficient proximity to the interstate train to cause accident to the interstate train if the men on that State train are worked excessive hours. Now, to protect the interstate commerce or the men on the train hauling it, it is just as necessary in that case that these men on this State train should have sufficient rest. Damage can be done to interstate commerce just as easily by their being overworked as if the men on the interstate train were overworked. Now, we want to suggest this to the committee: That Congress can in its regulations, in trying to protect that interstate commerce and the employees employed thereon, or the interstate passengers who are carried on that train, protect them by saying in effect that they shall not be brought in proximity to a

train on which the men have not had sufficient rest. That was our idea.

Mr. ESCH. One other question. As the bill is drafted it sets the machinery in motion on information. Would it be better to have it set in motion on complaint?

Mr. FULLER. We considered that question.

Mr. BARTLETT. You also provide that if, after investigation, such information is found correct, and so forth, action shall be taken.

Mr. FULLER. There is information that comes to the Commission. It has various sources of information. If we made it contingent upon complaint, it would be necessary for some of the employees to make formal complaint to the Interstate Commerce Commission. It would also be necessary for them to appear and produce proof; and while that is perfectly legitimate, it picks out those men who really want to stop this evil and want to do the right thing; it picks them out and subjects them to the disapproval of their employers to the extent, in many cases, of dropping them from the service. Suppose an employee complained and the Commission laid down a rule. The road is then confronted with a set of rules laid down by the Commission fixing a maximum number of hours beyond which it can not work its men. Now, I think naturally that road would rather be without that restraint, and it would say: "Who is to blame for this?" "One of our own employees." I think it goes without saying that that man could expect when an opportunity came, at least, he would be dropped from the service.

Mr. MANN. Your theory is to have the Interstate Commerce Commission follow up with an inspection and look it up?

Mr. FULLER. Yes, sir. The Interstate Commerce Commission now takes cognizance of these abuses; not abuse of law, but these excessive hours, because it comments on them in its reports and bulletins. Now, where does it get that information? The accident law of Congress requires that the roads shall report to the Commission, and the Commission can prescribe the form of the report, and can follow that report up by questions to the railroads, and ask how long these men have been on duty; and they do that to-day, and the bulletins of the Commission show many cases where lives have been lost by working men excessive hours. We want to put that responsibility on the Commission. In addition to that it has a force of inspectors traveling around the country to-day who come in contact with these conditions, and it can get information in that way.

We think it is better to leave this with the Commission. If you do not, if you make it contingent upon complaint, the law will not be enforced, for the men will not make complaint because they will fear it will be laid up against them. We have a safety-appliance law, for instance. I know of cases where that has been violated. I know of one in particular, where an employee was blamed for making complaint to the Interstate Commerce Commission for the violation of that law by the railroad, and he was discharged for it. He was told that he was discharged for it in so many words. And the committee that called upon the management to have his case adjusted were told without any blush whatever that that was the reason he was discharged—that he was getting them into trouble. They say they do not want any spies in their service.

The Commission has a means of getting this information now. Its files are teeming with cases of excessive hours. They are working men excessive hours, and when they ought not to, and men are being killed and injured as a result of it; and not only that, but they are permitting the men who think more of increasing their earnings than of the safety of themselves and others to do it; and I want to put just as much emphasis on my condemnation of that class of men as I do on the railroad companies who take advantage of it, because they are just as bad; and I say the fact that we have two influences which lead to the doing of this thing—where we have men who want to work and endanger the lives and limbs of themselves and passengers and their fellow-employees, in addition to the company desiring to work them overtime—emphasizes all the more the necessity for Congress to take control. And I want you to understand this, that if there is a law passed it will be displeasing to that class of men. But is that any reason why Congress should not protect this great interstate traffic which the Constitution puts under its guardianship? We did not come to you asking for legislation on this question until we had exhausted every means at our command to remedy it.

Mr. MANN. In speaking of the Constitution, have you taken any opinion as to whether this would be constitutional if enacted into law?

Mr. FULLER. I will say this: The title of this bill I think clearly expresses its purpose.

Mr. MANN. I mean this: I want to know whether this is endeavoring to confer legislative power upon the Commission?

Mr. FULLER. Well, I suppose we can answer that better by waiting for the result of the rate bill and seeing what happens to it.

Mr. MANN. We claim that in the rate bill we do not confer legislative power. Have you taken the opinion of counsel on that subject?

Mr. FULLER. We have not taken that into consideration, but we have this: Congress has required safety appliances with a view of protecting life and limb, and it has just as much authority to protect life and limb from danger as a result of working men excessive hours as from any other cause.

Mr. MANN. In the safety-appliance act we did not simply say that the Interstate Commerce Commission could do what it pleased.

Mr. FULLER. No, sir.

Mr. ADAMSON. Suppose we just provide that it shall be unlawful for any man to be worked over eight hours, and then ask the Interstate Commerce Commission to see that enforced?

Mr. FULLER. Then you would immediately get into trouble. We would like to see it done that way. I think it would be better to do that. Then this question that you speak of would not come in; but it would not be practical to lay down an eight-hour rule on railroads.

Mr. MANN. I do not want to be engaged in enacting legislation of that sort, which would be unconstitutional, or which could not be enforced.

Mr. FULLER. We will cheerfully submit that point to this committee, and whatever they think is right we will accept. We want to cooperate with you just as much as we can and to get a start. We do not think this bill, if enacted into law, would cure the evil, but it is a start.

Mr. ADAMSON. They think it is unwise and unhealthy for a Government clerk to work over seven hours a day. Do you think railroad work is more favorable to health than that?

Mr. FULLER. I say this, that if the operation of trains were such that trains could be stopped and men relieved and go to their homes and get back to their work at any time, there would be no more necessity for men to work more hours in railroad service than in the Government service; but I think it would be wrong, absolutely so, for a passenger crew on one of the transcontinental lines out in the American Desert, simply because as a result of casualty it had been on duty for the required number of hours, to stop work and tie up the train with all its passengers out there until they could take a certain amount of rest.

Mr. ADAMSON. That is an exigency; but we do not want to manufacture exigencies.

Mr. FULLER. No, sir; but I simply say that in answer to your question as to whether railroad employees should work more than eight hours or not. That is what we have to contend with, and if it were not for that this matter would be easy and simple.

Mr. Chairman, the main thing about legislation is proper machinery for its enforcement, and I think this bill has that machinery. I think the machinery is really the biggest part of the bill, and I want to call your attention to the fact that no railroad company, according to this bill, need feel that they are put under any restraint at all if they do the right thing. If they want to arrange their conditions so these men will not have to work excessive hours, we will be the last ones to ask the Interstate Commerce Commission to exercise this authority and lay down a rule, and until they abuse the privilege they will not be put under restraint.

Mr. BARTLETT. On that subject there is this suggestion: How would it be for the law to fix what should be the limit, beyond which they could not go, and to provide that the railroad commission might reduce that upon investigation?

Mr. FULLER. Reduce the number of hours?

Mr. BARTLETT. Yes; and that would not give them legislative powers. Congress has often fixed a limit.

Mr. MANN. I suppose this bill was introduced by Mr. Esch at your request?

Mr. FULLER. Yes, sir.

Mr. MANN. You people drew the bill?

Mr. FULLER. Yes, sir.

Mr. MANN. Would it not be a good idea for you to take the matter up with the Interstate Commerce Commission in some way and ascertain as to the validity of such an act after it was passed?

Mr. FULLER. The Interstate Commerce Commission cooperated with us in drafting this bill. It has the approval of the Interstate Commerce Commission, so far as I know.

Mr. MANN. But did they submit it to counsel?

Mr. FULLER. I do not know that they did.

Mr. GAINES. Could not we submit this to the Interstate Commerce Commission with a request that they have prepared for us an opinion as to its constitutionality?

Mr. TOWNSEND. You would better submit it to the Attorney-General.

Mr. ADAMSON. The thing could be done easier by letting the constitutional lawyers in the Senate pass it first.

Mr. FULLER. I had a few more remarks to make, but I have encroached on the time of Mr. Norris too much already.

The CHAIRMAN. You said something a little while ago about there being a scarcity or not a sufficient number of men. That was in connection with the possible effect of the failure of a crew to respond. Under what influence is that condition brought about, where there is an insufficient number of men? Is that at the instance of the road or at the instance of the organizations?

Mr. FULLER. It is not at the instance of the organizations. It is at the instance of some men at times; this class of men who want to make lots of money, who are willing to risk their lives and those of their fellow-employees to make more money. The organizations which I represent, so far as they are concerned, do not believe in that. There is no stronger evidence that we do not believe in it than the fact that we are coming here and asking you to pass legislation to prohibit it.

Several European countries limit the hours of service of railroad employees. The law of England delegates authority to fix the hours to the board of trade, and if any railroad company fails to comply with the order of that board, the board then submits it to the railway and canal commission, and that commission takes jurisdiction and lays down an order which the roads are compelled to obey. In France, Belgium, and Prussia the hours are fixed by ministerial decrees, and in Italy and Switzerland they are regulated by law.

The CHAIRMAN. What hours are fixed under those systems?

Mr. FULLER. Various ones; but I have been unable to get hold of a sufficient number of the rulings, of those decrees, to give you anything tangible. I got my information from the bulletins of labor published a number of years ago.

Mr. ESCH. I understand that in France it is ten hours.

Mr. FULLER. I could not say as to that.

The President has recommended this kind of legislation in his last two messages to Congress. In his message to the third session of the Fifty-eighth Congress he said:

> I * * * would also point out to the Congress the urgent need of legislation in the interest of the public safety, limiting the hours of labor for railroad employees in train service upon railroads engaged in interstate commerce.

In his message to the present session he said:

> The excessive hours of labor to which railroad employees in train service are in many cases subjected is also a matter which may well engage the serious attention of the Congress. The strain, both mental and physical, upon those who are engaged in the movement and operation of railroad trains under modern conditions is perhaps greater than that which exists in any other industry, and if there are any reasons for limiting by law the hours of labor in any employment, they certainly apply with peculiar force to the employment of those upon whose vigilance and alertness in the performance of their duties the safety of all who travel by rail depends.

Mr. FULLER. I have here the resolutions of a couple of the organizations I represent. I have encroached on the time of Judge Norris too far already, and that is all I have to say.

Mr. GAINES. We have asked questions, and that takes up a good deal of time.

Requiring a greater number of men when business is particularly good would have some effect, would it not, on the employment of men when conditions happened, if they ever did, not to be so good. For instance, if there should be 20 per cent less railroad work to do, and they should have increased the men, how would that affect the number of men now? Would not that throw a great many men out of employment, if there was less to do?

Mr. FULLER. It is true if they lay off men when business gets slack it throws them out of employment, but that should not stand in the way of safety to life and limb, and that is the principal thing to be considered.

Mr. GAINES. I am inclined to favor a proposition of this sort, which seems to be necessary to protect the public, but I would be glad if they would also protect the men; but I would not want to enact such legislation without considering also whether it would work a hardship or an advantage to the men employed, and that is the question that I am now putting.

Mr. FULLER. Of course a man that loses his position as a result of slack business regards it as more or less of a hardship, but that is a natural thing that no member of Congress is responsible for. If in trying to save life and limb a man is put out of a job, I do not think any responsibility should attach to the lawmaker.

Mr. TOWNSEND. That might apply anyway, under present conditions?

Mr. FULLER. Of course it applies.

Mr. MANN. It seems to me it is analogous, or seems to be, very largely, to the question with which we are already more or less familiar—of railroad-car equipment. The railroads can not have all the cars necessary at the briskest day of the busiest time of a busy year, because at other times in less busy years they would have too much unemployed equipment. I am told by railroad people that it is a difficult thing to properly adjust that so that the shipper can be accommodated and the railroad not have too much equipment. It is the same way with the men. If they have all the men necessary not to overwork them on the busiest day of the busiest year, might they not have a number of men who are out of employment and not getting enough to support their families at other times?

Mr. FULLER. That may be true, but I can not see how we are to correct this evil and take into consideration the men that lose positions as a result of it. I do not think we are responsible for that.

Mr. NORRIS. Will you put in that list?

Mr. FULLER. Yes, sir.

Resolution passed by the Brotherhood of Locomotive Engineers at its convention at Los Angeles, Cal., in the year 1904.

Be it resolved, That the grand chief engineer be, and is hereby, instructed to present to all subdivisions for signatures of their members a petition addressed to the Congress of the United States, asking said Congress to enact a national law prohibiting the excessive hours that engineers on many roads are now held on duty. When said petitions are returned to the grand office, the grand chief is instructed to present the same to the Congress of the United States in such manner as he deems best.

Resolution passed by the Brotherhood of Railroad Trainmen at its convention at Buffalo, N. Y., in the year 1905.

Whereas a large number of railways are requiring their employees to work an excessive number of hours, thereby endangering their lives and those of the general traveling public: Therefore, be it

Resolved That we condemn such a practice and urge Congress to enact a law governing the number of hours of service to not exceed sixteen hours for all employees engaged in train and yard service, as a large number of accidents that occur on the railroads are directly or indirectly traceable to the fact that employees have been overworked.

After informal discussion among the members of the committee, the further consideration of this matter was postponed until Friday, April 27, 1906, at 10.30 o'clock a. m.

(At 12 o'clock m. the committee adjourned.)

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Friday, April 27, 1906.

The committee met at 10 o'clock a. m., Hon. William P. Hepburn in the chair.

The committee thereupon proceeded to the consideration of bills H. R. 4438, H. R. 16676, and H. R. 18671.

STATEMENT OF HON. GEORGE W. NORRIS, REPRESENTATIVE FROM NEBRASKA.

Mr. NORRIS. Mr. Chairman and gentlemen, at the last meeting of the committee, when the hearing on these bills was commenced, Mr. Fuller took up the time principally in the discussion of the question as it applies to railroad employees. While that is, in my judgment, a very important reason for the enactment of some legislation on this subject, there are other interests besides that that are likewise entitled to consideration.

As I view it, gentlemen, there are three reasons why legislation of this nature should be enacted by Congress:

First. The protection of interstate travel, which is sufficient to give the Congress jurisdiction of the subject, and is, perhaps, the main reason why it is entitled to jurisdiction. This would of itself be sufficient, in my judgment, to move Congress to the enactment of some legislation upon the subject.

Second. The protection of railroad employees.

Third. The protection of the shipping public.

I want to refer briefly to each one of these reasons. Perhaps the reasons for the enactment of this legislation as far as the first one is concerned will suggest themselves to everyone—that Congress ought to protect the people who are traveling over our highways from one State to another, if there is any danger (and I think everyone will agree that there is), where the persons who are engaged in the handling of the trains, not only the trains themselves, but in the offices, the dispatchers, etc., and everyone that has anything to do with the management of the trains, are compelled or allowed to work for a greater number of hours than men can work and retain the control of their own faculties.

The railroad employees are interested in this proposed legislation, or the public for them, both as a matter of protection to them and to the traveling public, to an equal extent. My attention has been called to the subject because where I live, on the Burlington road, in a railroad town where three-fourths of the people of the town are engaged either directly or indirectly in working for the railroad company, I have come in personal contact in traveling about over the country with the railroad employees who are thus overworked, in my judgment. And I am going to submit to you some statistics—something that is difficult to obtain, for the reason that those of the railroad employees who are opposed to the present method are very careful about giving information, as they claim (a great many of them, at least) that if they do there is danger of their losing their positions, even though some other reason for their discharge would perhaps be given. But it is the common thing for men upon the trains to be in continuous employment from thirty up to as high as fifty hours, and is quite an ordinary thing on some of the trains for forty hours to be consumed in going over the division.

In my judgment, this has come about from what is known as the new tonnage rule. It came to my notice after the Burlington Railroad Company went under the control of what are known as the Hill interests. Prior to that time I never heard any complaint, and from my observation never saw anything wrong along these lines. But immediately afterwards the rule went into effect that no train should move until it had the required amount of tonnage. The result was that a train was loaded down before it moved with every pound that the engine could pull; and the trains went over the road very slowly, taking a great deal of time, necessarily. These trains are mostly what are known as local freight trains. The through, fast freights, of course, went more rapidly.

For instance, from Hastings, Nebr., to McCook, Nebr., one division, and from McCook, Nebr., to Akron, Colo., another division over the road, are the two divisions about which I know more than any others on that road or any other road. It became a very common thing for trains to start out, and for engineer, fireman, brakeman, and conductor to be in continuous service from thirty-five to forty-five hours in going over those divisions. In order to get the benefit of this tonnage rule the schedules of the local trains west of Hastings were changed, so that they ran only twice a week. That does not mean that there were only two trains run twice a week; the reason for it was that they would not have any schedule on which to run a train, so they would not be required to run any until they got the required amount of tonnage. They ran them as extras; they ran a train whenever they got a whole load.

That train would run from Hastings to McCook, and when it got to McCook it would not have the required amount of tonnage to go farther. It would lie there until there accumulated sufficient tonnage to make another train, and then it would start for McCook. Perhaps five-sixths of the trains were extras; so that there were trains every day, as a general rule, but they had no schedule, in order that they might work the tonnage rule.

The result was (speaking now from the shipping standpoint) that whereas prior to that time merchants living along the line could order

goods from Omaha, St. Joe, and Kansas City with a definite knowledge as to the exact train and practically the hour when they would arrive, under the new tonnage rule it was all guesswork. If the goods were delivered to the railroad company about the time they had a train load made up, they would perhaps start and get part of the way, to some division station, and lie over there until another train load had accumulated. The result was that all along that line through southern Nebraska, through my country, goods which had been delivered under the old rule in from twenty-four to forty-eight hours were from two weeks to thirty days on the road, without being transferred from any other road.

For instance, I recently had a conversation with a conductor who had just come from St. Francis, Kans. That is another line of the Burlington system, which runs out of Nebraska into Kansas. He told me that the depot there was piled full of freight shipped out of Kansas City that had been twenty-seven days out of Kansas City. Now, there was no transfer of that freight. It went over the Burlington road the entire distance; but it simply illustrates what the tonnage rule means to the shipper.

It may be, gentlemen, that technically speaking this is not a legal reason for the passage of the bill. I simply mention it in order to show that in addition to those benefits that must naturally, in my judgment, come from the enactment of this kind of a law, there are others equally beneficial to the shipping public.

Mr. MANN. Mr. Norris, I may be very dull, but I fail to see the connection yet.

Mr. NORRIS. Between what, Mr. Mann?

Mr. MANN. Between the delay of twenty-seven days and sixteen hours' labor.

Mr. NORRIS. The delay results simply because this freight that is loaded up on a car, waiting for a train load to accumulate, stays in a yard somewhere and lies over until enough freight accumulates to make all that an engine will pull, and then it is moved to another division. It has been diminished, in the meantime, by taking off freight at different stations; and there it waits again until some more freight accumulates.

Mr. ADAMSON. The crew is on duty all that time?

Mr. NORRIS. No; I do not mean that the crew was on duty for twenty-seven days.

Mr. SHERMAN. Then, what connection has it with this bill?

Mr. NORRIS. It shows one of the benefits, as I said. The legal reason for the enactment of this bill may not be evident; but it shows one of the benefits that will come, outside of the technical reasons for the enactment of this kind of legislation.

Mr. MANN. How long does it take a local freight train to run from Hastings to McCook?

Mr. NORRIS. I can not give you the exact mileage now. I ought to have that, too; but it is in the neighborhood of 100 miles.

Mr. MANN. But how long does it take a local freight train to run that distance?

Mr. NORRIS. Sometimes two days. When that happens, they lie over somewhere.

Mr. PAYSON. To go 100 miles in distance?

Mr. NORRIS. Yes, sir; you can often drive the merchandise a great deal quicker with an ox team than the freight train will take it from one place to the other.

I want to tell you, by way of illustration, what a traveling man told me who went a little farther, 54 miles west of McCook, to Benkelmann. (I think it is just 54 miles; it is not far from that, anyway.) He went up there and sold a merchant there some flour. He went over the ground every two weeks. The flour was made in McCook, and he said it was immediately shipped and delivered to the railroad company. Two weeks from that time he went on his regular rounds again, and went into the same merchant's store, and he did not see any flour; and he congratulated the merchant on selling that consignment of flour so soon. He was informed by the merchant that the flour had not yet arrived; that it had not come yet.

Mr. TOWNSEND. Mr. Norris, can you tell me how this twelve-hour law is going to remedy that condition?

Mr. NORRIS. It is going to remedy that condition from the fact that if this twelve-hour law is passed—I am not contending for any particular bill or any particular time—but if the legislation on this subject is enacted and enforced, it will remedy that condition for the reason that the time now consumed in going over the railroad division from one end to the other is longer than will be permitted by the law and the result will be that they must run lighter trains and get over the ground more quickly.

Mr. MANN. You say that the Burlington road has a schedule train twice a week, and that, as a matter of fact, it runs them nearly every day?

Mr. NORRIS. Yes, sir.

Mr. MANN. Now, I do not yet get the connection between twenty-seven days' delay and sixteen or twelve hours of labor, in view of the fact that the road runs trains at least twice a day.

Mr. NORRIS. These trains that were delayed twenty-seven days, Mr. Mann, had gone over quite a number of divisions, and I suppose they had, perhaps, been allowed to lie in the yard for several days before they were ever started out of Kansas City. They lay in some other division several days. They were waiting at several different places for the accumulation of enough freight to make a train load, under their tonnage rule.

Mr. MANN. Do I understand that the Burlington road running out of Kansas City only runs local freights?

Mr. NORRIS. Oh, no; no.

Mr. MANN. Then, if it had freight to go over a number of divisions, it would not hold it for the first local freight?

Mr. NORRIS. It would hold it until there was a train load of it. I suppose the freight that accumulated there in Kansas City would wait for a train load.

Mr. MANN. Well, I do not understand this. The Burlington road must be going out of business if it has to wait twenty-seven days to get a train load of freight out of Kansas City.

Mr. NORRIS. No; that does not follow by any means. Say that it went out of Kansas City and came to some other division and waited there; it went out of that division after a while and waited at another one; it went out of that one and waited at another one. It got into Orleans, where it was transferred to the branch line that runs to St.

Francis, Kans., and perhaps waited there. I do not know where it waited, but it waited somewhere. And I want to tell you that all along the line every merchant, every man that ships any goods, will tell you the same thing—that they have to wait from a week or ten days all the way up to thirty days in order to get goods shipped from Omaha, Nebr., to the western part of the State of Nebraska.

Mr. SHERMAN. Mr. Norris, will you not explain how this bill proposes to meet that evil?

Mr. NORRIS. My judgment is that it will do so by limiting the number of hours. For instance, if a crew goes out of Hastings, Nebr., now, and the members of that crew are limited in the hours of continuous service that they can perform, they must get over the line within that limit.

Mr. ESCH. In other words, they can not adhere to that tonnage rule?

Mr. NORRIS. No, sir; it will knock out the tonnage rule.

Now, going back again, gentlemen——

Mr. BARTLETT. Mr. Norris, may I ask you a question?

Mr. NORRIS. Certainly.

Mr. BARTLETT. I would like to call your attention to what the Supreme Court has decided in two cases. The State of Alabama prescribes certain qualifications and requirements in reference to engineers—for instance, what is called the color test for the eyes. In the case of Smith *v.* Alabama, 134 United States (124 or 134, one or the other), an engineer who ran a train from one State to another through the State of Alabama was required to take out a license issued by a board created by the statute law of Alabama, who had to pass upon the qualifications. There were certain tests which the engineers had to submit to as to their eyes, whether they could distinguish colors or not. This engineer did not do that, and was indicted under that law. He took out a writ of habeas corpus and insisted that that law did not apply to him, because he was engaged in interstate commerce.

Mr. NORRIS. This was a State law?

Mr. BARTLETT. Yes; a State law. And that his business had no connection whatever with the State except to pass through it. The Supreme Court of the United States, with only one judge dissenting—I forget who it was—decided that that law was valid, and that the fact that the engineer was engaged in running an interstate train did not make him engaged solely in interstate commerce. But the point he submitted was that the law did not apply to him, and that the United States Congress had not prescribed any such law.

Mr. NORRIS. The Supreme Court held that it did apply to him?

Mr. BARTLETT. Yes, sir; and the contention of the Alabama board was upheld. In another case, in 128 United States, the Louisville and Nashville Railroad undertook to prevent the enforcement of that law as to their employees who were engaged in running interstate trains, and the Supreme Court ruled the law out.

Now, the question I want to ask is this: Suppose we prescribe a limitation of fourteen hours upon engineers and other trainmen engaged in running interstate trains and the State of Alabama has another law?

Mr. NORRIS. A different number of hours?

Mr. BARTLETT. Yes; say, twelve; what would follow?

Mr. NORRIS. I do not want to get into a discussion here as to what would follow in case of that kind of a conflict, but I think there is not any question whatever that Congress has the right to limit the number of hours of railroad employees as far as interstate traffic is concerned.

Mr. BARTLETT. There is a very serious doubt about it under the decisions.

Mr. NORRIS. I should think the law would be supreme if one——

Mr. BARTLETT. I want to say this before you get through—that I agree thoroughly that some legislative body that has the power ought to undertake to prevent excessive hours of labor not only on the part of this class of men, but any class of employees; and the State of Georgia has a law which provides that no man shall be employed more than a certain number of hours in running trains.

Mr. NORRIS. I want to ask you, if you will permit me—it is digressing a little, but it may throw some light on the matter—whether, as a rule, that law is enforced?

Mr. BARTLETT. I think it is.

Mr. NORRIS. Is it pretty well enforced?

Mr. BARTLETT. Yes. It grew out of the fact that we had a horrible wreck in the case of a freight train, the conductor and engineer of which had been called up and put to work after they had been at work for a number of hours, and had gone to sleep. After they had been asleep three hours they were called up to carry out a special train—one of these fast freight trains filled with fruit—watermelons. The engineer and the conductor were two of the oldest and best employees upon the road, but they admitted that they ran by the meeting point; they were absolutely so exhausted that they forgot to stop there, and the engineer himself came very near being killed, and the conductor, too. They were both discharged; but they were regarded as as faithful and efficient employees as the road had. But they were exhausted, and nature could do no more.

Mr. ADAMSON. I do not see how there could be a conflict between two negatives. If one authority provides that they shall not run over twelve hours, and the other provides that they shall not run over fourteen hours, the lowest number, therefore, will be in effect.

Mr. NORRIS. Of course, if there was a lower number——

Mr. BARTLETT. Suppose it was sixteen.

Mr. NORRIS. If the State of Georgia said twelve hours, and the United States said sixteen, there would be no doubt that working a man fifteen hours could not be prosecuted under the general law. That would be true.

Mr. BARTLETT. I want to help you all I can, you know.

Mr. NORRIS. Yes.

Mr. BURKE. Judge, on the point you are discussing, if a train requires twenty-four hours to make the distance between the points you have indicated, and there is a law passed which provides that employees can not work longer than twelve hours, do you think that would mean that the railroad company would run more trains? Would it not be much cheaper for them to put on another crew?

Mr. NORRIS. To put on another crew?

Mr. BURKE. Yes.

Mr. NORRIS. No; I think not.

Mr. BURKE. You think it would be cheaper to run another train than it would to put on a conductor and two brakemen and an engineer?

Mr. NORRIS. They could not be required to run another crew unless they shortened up their divisions.

Mr. BURKE. They could do that, could they not?

Mr. NORRIS. Not very well.

Mr. BURKE. Do you not think there is some point midway between Hastings and McCook?

Mr. NORRIS. There is not there. As a matter of fact, they want to have as long divisions as they can. It is not economical, as I understand it, to operate a railroad with short divisions.

Mr. BURKE. I want to say, as a member of the committee, that I am heartily in sympathy with any legislation that will prevent railroad companies from compelling their employees to work the number of hours that you have indicated that they do work; but I can not see where there is any connection between that and what you have been speaking about.

Mr. NORRIS. You will understand, Mr. Burke, that while I certainly think there is a connection and that it will lessen that evil, I mentioned those things, as far as the shipper is concerned, as showing, in my judgment, what would follow outside of the real, legal reason that could be given for the enactment of this law. I admit that if there was no other reason except that, Congress would not be justified in making the law on that account.

Mr. BURKE. That would be an incidental benefit, in your opinion?

Mr. NORRIS. Yes, sir; and a great one, in my judgment—one of the greatest.

I would like, Mr. Chairman, to submit some instances. I have some statistics here from the Interstate Commerce Commission that I want to file with the clerk and have printed in the record. Without reading them, I will give to the clerk, if that will be agreeable, Mr. Chairman, a copy of each one of these tables that I have prepared, showing the number of hours that trainmen have been worked where there have been accidents; and I want to ask you all to look these figures over carefully as they are printed, because I think they make a very interesting exhibit and will show conclusively, I think, that something ought to be done along those lines.

Mr. PAYSON. Mr. Chairman, may I ask the gentleman if that table of statistics is confined to the Burlington road?

Mr. NORRIS. No, no. I got it from the Interstate Commerce Commission.

I would like to give you a few instances now, just taking them at random, of some reports that I have in regard to the train that runs from Orleans, Nebr., to St. Francis, Kans.—the train I mentioned a while ago; the place where I said this freight was on the depot for so long a time.

That train starts at Orleans and runs to St. Francis. (I want to take these at random and run down for thirty days and give you the number of hours that that train was behind time.) Its schedule time is about twelve hours, something like that, and it is a branch line. The business done on it is not as great as on the main line. At the dates that I am giving there was only one train each way, so that there was no danger of its being laid out for passing trains.

Mr. WANGER. It is a single-track road, is it?

Mr. NORRIS. A single-track road—yes, sir.

Commencing there, for instance, the first day it was twenty-three hours late; the next day, fourteen hours late; the next day, one hour and ten minutes late. Then, skipping Sunday, when there was no train, on Monday it was twenty-one hours late; the next day, nine hours late; six hours late; five and three-quarters hours late; sixteen hours late; seven hours late; seven hours and forty-five minutes late; five hours and forty minutes late. Then there is one thirty-five minutes late, twelve and a half minutes late; then one hour late, eight hours and forty minutes late, five hours late, four hours late, five hours late, six hours late, eighteen hours late, five hours late, eight hours late, twelve hours late, and four hours late.

Mr. RYAN. Those are all freight trains?

Mr. NORRIS. Yes, sir.

Mr. WANGER. Were those employees in continuous labor?

Mr. NORRIS. Yes, sir. I happen to know about that train. It starts out in the morning and is supposed to get in in the evening and start back again in the morning. The employees have, between the time they get in and the time they go out, about eight or ten hours. When they get in as late as most of those trains are they do not go to bed at all; they simply start right back, so that they are making another trip——

Mr. MANN. What is the schedule time for that train?

Mr. NORRIS. I can get that and give it to you, but I have not it here, Mr. Mann. I wish I did have.

Mr. WANGER. Did you not say about twelve hours?

Mr. NORRIS. Yes, sir; that is from my recollection. I am not acquainted with the whole country there.

Mr. BURKE. Have you any information as to whether that train started on its schedule time from the place of departure?

Mr. NORRIS. No; but whether it did or not, the men were on duty from the schedule time. In fact, they were on duty prior to the schedule time.

Mr. MANN. Mr. Norris, you have traveled on these local freight trains, have you not?

Mr. NORRIS. Yes, sir; I have traveled on them.

Mr. MANN. If a train is twenty-one hours late, it is because it is laid out on a siding at some place, is it not?

Mr. NORRIS. No, sir; not in the case of this train.

Mr. MANN. What makes it late, then?

Mr. NORRIS. It is late because of the work that it has to do. Let me give you an instance, since you call it to my attention.

Not long ago I was over at Beaver City, the largest town on this road, and wanted to take the train there to go around to my home in McCook. I could have gone down to Orleans and changed cars and gotten a direct train home. Around it is about 75 or 80 miles, the way the train runs. A train came into that station and wanted to take water—it had to, in fact—and the engineer stopped about 40 feet before he got to the water tank, and he was half an hour getting up to that water tank. He had all that his engine could move, and he pushed and backed and finally uncoupled the engine and came up, took water, and went back; and then it was pretty nearly another half hour before he got the train up to the depot proper.

Mr. MANN. He did not have steam up, then.
Mr. NORRIS. Yes; he did.
Mr. MANN. He ought to have been discharged.
Mr. NORRIS. He had all the steam that his engine would stand.
Mr. MANN. Oh, pshaw!
Mr. NORRIS. Yes; he did.
Mr. MANN. You can not make me believe it takes an engine half an hour to go 40 feet when it has steam up.
Mr. NORRIS. But, Mr. Mann, it was not from the fact that he was half an hour in going that distance, but that he had too heavy a train to handle; and he never did get there until he uncoupled his engine and went up.
Now, the conductor in charge of that train had orders to pick up two loads of wheat that were on the side track there. He telegraphed in to headquarters and told them that it was an impossibility; that he absolutely could not haul it. This is what he told me; that is all I know about it. I asked him what word he got back, and he said he got back word that he was doing pretty well; to hitch on the other two cars and come up. [Laughter.] And we got around to the place where I had to change cars after 9 o'clock at night, when we were due to get around there at 4.35, I think.
Mr. ADAMSON. The day before?
Mr. NORRIS. Well, no; that was all the same day at that time. It is a common thing, however, for those trains to get in the next day.
Mr. RYAN. Are they ever on time on that particular road?
Mr. NORRIS. Yes, sir.
Mr. SHERMAN. Under those circumstances, what about their starting back?
Mr. NORRIS. They never start back until they get there, of course. [Laughter.]
Mr. SHERMAN. Then do they lie over until the next day?
Mr. NORRIS. No; they start back just as soon as they can.
Mr. WANGER. Without any rest?
Mr. NORRIS. Yes; without any rest.
Mr. MANN. A train that runs as slowly as that, with nothing to do except to wait for the engine to get water and make steam, has plenty of time for every one of the employees to sleep eight hours on a stretch.
Mr. NORRIS. Well, Mr. Mann, I do not want to take up too much time, but I can give you, of my own personal observation, instances that sound like fairy tales in regard to some of those trains. Since you speak about the question of steam, I will tell you of another instance, where I went from my town to Brush, Colo., and from there up through the corner of Colorado into Nebraska again, to Sidney, where I took a train to go to Brush. The train went on to Denver right after dinner. It was due in Sidney at 9 o'clock; but I had my dinner first, and did not get my dinner until after 12, and got there before the train came in; and I took the train and got into Brush, Colo., just a little while before it was time to have supper. Now, the crew that was on the train came from Denver and met this train at Sterling, Colo., where they took that train and went back again. The run was from Denver to Sterling, Colo., and back again. That crew met the train there and took it back, and they had left Denver about 3 o'clock in the morning. It was 9 o'clock at night before the fireman

of that train had any supper, and I stayed overnight there to wait for the train. The fireman refused to work any longer, and went to bed; and they put the train on the side track and waited there until the next morning, when he got back. Now, those men told me just exactly how many tons of coal that fireman had shoveled, and just exactly what he had done; but he had been on duty since early in the morning, somewhere about 3 o'clock, continuously shoveling coal until 9 o'clock at night, when he was completely tired out and went to bed.

Mr. BURKE. How many miles had the train gone in that time?

Mr. NORRIS. I could not give you the mileage, but you can easily get it from the time tables of the Burlington road. It runs from Denver, Colo., up the main line to Brush, and from there up to Sterling, Colo.

Mr. TOWNSEND. How is it about accidents, Judge Norris?

Mr. NORRIS. The statistics that I have given you there show that.

Mr. TOWNSEND. Do you know of any accidents that have occurred on those roads.

Mr. NORRIS. Yes, sir; I know of accidents that have occurred on those roads because of the men being overworked. I was going to refer to them, but I do not want to take up time. You have the information in the record, and you will be able to get what I was able to get. It is very incomplete, because there is not any law that requires the giving of this kind of information.

The tables referred to by Mr. Norris during his statement are as follows:

Statement of personal injuries to employees, showing causes of accidents, hours on duty, and hours of rest, as reported to the Commission since July 1, 1901.

Killed.	Injured.	Cause of accident.	Hours on duty.	Hours of rest.
.....	1	Lying beside track sleeping; struck by train	21	(a)
.....	1	Asleep on track; struck by train	21	(a)
.....	1	Sat on track; went to sleep and was struck by train	20	(a)
1	.....	.....do	18	12
1	.....	Sat on track: fell asleep and was struck by train	25	4
.....	1	Sent back to protect rear of train; fell asleep at side of track; struck by train	21	(a)
1	.....	Sat on track; went to sleep; struck	15	(a)
1	.....	Fell asleep while sitting on track; struck by train	17	7
.....	1	Sat on track; went to sleep; struck by train	23	19
.....	3	Engineman dropped crown sheet, blowing out grates, ash pans, and connections	23	(a)
.....	1	Asleep on track; struck by train	17	12
.....	1	Sent out to flag train and fell asleep on track	15	8
1	.....	Out flagging; went to sleep on track	16	22
.....	1	.....do	32	(b)
1	.....	Supposed to have sat on track and gone to sleep	15	(c)
.....	1	Laid down between main track and siding; fell asleep and was struck by engine	20	(a)
.....	1	Out flagging; went to sleep and was struck by engine	d24	(a)
1	.....	Out flagging; sat down on rail and is supposed to have gone to sleep	19	12
1	.....	Out flagging; went to sleep on track	.....	9

a Not given.
b Without proper rest.
c Had 48 hours opportunity for rest.
d Length of time caused by congestion of freight that had to be moved.

Statement showing train wrecks, with number of hours that trainmen were on duty, and hours of rest previous to going on duty, as reported to the Commission since July 1, 1901.

Collisions.	Derailments.	Personal Injuries. Killed.	Injured.	Damage to cars.	Cause.	Hours on duty.	Hours of rest.
1	.....	.....	2	$2,000.00	Crew falling asleep	27	4
1	.....	.....	2	500.00	Engineman falling asleep	29	12
1	.....	1	1	700.00	.....do	16	19
.....	1	.....	3	600.00	Engineman and brakeman asleep	18	.....
1	.....	.....	3	1,300.00	Overlooked train No. 11, mistaking it for No. 5	29	1½
1	.....	.....	1	3,050.00	Running down grade too fast	18	13
1	.....	.....	1	1,036.00	Running at high rate of speed	18½	17
1	.....	.....	2	6,656.00	Train not under proper control	22	13
1	.....	1	2	1,350.00	Snow plow ran into rear of caboose	18	.....
1	.....	1	2	1,800.00	Let engine run out at other end of switch and fouled main track	18	(a)
1	.....	2	3	3,064.00	Engine crew of freight train forgot passenger train	19	10 to 20
1	.....	.....	22	600.00	Failed to wait prescribed time	15	12
1	.....	.....	1	2,300.00	Head-on collision of freight and extra	21	14, 24
1	.....	.....	1	1,800.00	Failure to flag train	15	48
1	.....	.....	4	5,100.00	Overlooked open switch	20	(b)
1	.....	2	1	7,000.00	Engineman asleep	9½	3
1	.....	1	.....	284.00	Conductor not being out on train	20	.....
1	.....	.....	1	1,487.00	Crew asleep	24	.....
1	.....	.....	1	280.00	Engineman failed to have engine under control	20	.....
1	.....	1	.....	2,600.00	Carelessness of engineman	17	9
1	.....	.....	1	1,285.00	Brakeman; improper flagging	30	15
1	.....	1	1	1,700.00	Misplaced switch	20	.....
1	.....	.....	1	2,000.00	Misunderstanding of signals	18	10
1	.....	.....	2	505.00	Crew not taking proper precaution	24	24
1	.....	1	11	2,050.00	Engineman disobeyed orders	15	10
1	.....	1	.....	5,900.00	Flagman asleep	16½	14½
1	.....	1	1	4,905.00	Engineman; train getting away	17	4
1	.....	3	1	14,500.00	Conductor failed to give signal	15	25
1	.....	1	8	1,800.00	Disobyed signals	48 47½	.....
1	.....	1	.....	600.00	Overlooked passenger train	17	(c)
1	.....	.....	3	2,200.00	Mistook red signal for green	21	.....
1	.....	.....	1	125.00	Did not keep lookout	17½	18
1	.....	1	2	1,300.00	Engineman and brakeman asleep	16	8
1	.....	.....	3	600.00	Flagman and conductor asleep	18	11
1	.....	1	3	5,000.00	Flagman failed to get back proper distance	17½	18½
1	.....	1	13	30,350.00	Not properly equipped with flagging signals	18	8
1	.....	.....	4	210.00	Running at too high rate of speed; foggy weather	17	12
1	.....	.....	1	1,500.00	Brakeman threw switch without instructions and fell asleep	18	32
1	.....	4	1	5,365.40	Engineman not seeing flagman in time on account of smoke	20	14
1	.....	.....	4	2,500.00	Engineman of freight pulled out ahead of passenger train	17	20
1	.....	.....	4	8,000.00	Improper flagging	16	(d)
1	.....	1	3	.....	Disobeyed rule respecting open switch	20	(e)
1	.....	1	2	400.00	Engineman responsible; not keeping proper lookout	22	5
1	.....	.....	.....	2,632.00	Approaching station at too high rate of speed to stop after seeing signal	17	3
1	.....	1	.....	1,000.00	Not protected by flag	15	11
1	.....	.....	.....	3,500.00	Carelessness of engineman	18	40
1	.....	1	.....	400.00	Flagman did not have flag out far enough	17	24
1	.....	1	.....	500.00	Disobeyed rule 99 in not properly protecting train	22	5
1	.....	.....	.....	500.00	Conductor and brakeman at fault in moving train before track was clear	15	(b)
1	.....	.....	3	883.00	Brakeman failed to go to far end of car to see that they had cleared.	18	10
1	.....	.....	.....	400.00	Engineman pulled down main track instead of taking siding as ordered.	21	24
1	.....	.....	.....	200.00	Failure of engineman to control train after passing green signal.	26	23
1	.....	.....	.....	400.00	Slow signal disobeyed	18	(f)
1	.....	.....	1	700.00	Flagman not out far enough to protect his train; discharged.	16	24
1	.....	2	8	4,000.00	From not being properly protected	23	36
1	.....	.....	.....	425.00	Engineman was asleep; discharged	38	17
1	.....	.....	.....	400.00	Brakeman lost control of cars	23	12
1	.....	.....	.....	1,100.00	Conductor failed to set switch for siding; brakeman also failed to make proper effort to stop train.	19	11

a Full rest.
b Several days.
c Ample rest.
d Not given.
e Two hours intermission.
f Sufficient rest.

Statement showing train wrecks, with number of hours that trainmen were on duty, and hours of rest previous to going on duty, etc.—Continued.

Collisions	Derailments.	Personal injuries.		Damage to cars.	Cause.	Hours on duty.	Hours of rest.
		Killed.	Injured.				
1	.....	1	1	$400.00	Conductor and flagman were asleep in caboose; train had no protection	21	5
1	.....	.....	6	1,000.00	Brakeman failed to turn switch; train ran in on siding	19	36
1	.....	.....	.....	390.00	Crew went to sleep	24	(a)
1	.....	.....	8	2,303.00	Disobeyed rule 17, train taking siding not being in the clear	(b)	.....
1	.....	.....	.....	350.00	Engineman at fault; in going back struck cars	20	(a)
1	.....	.....	.....	500.00	Work train fouled main track without due protection. Rule: "An inferior train must keep out of the way of a superior train"	(c)	(d)
1	.....	.....	3	1,700.00	Failed to protect train	24	9
1	.....	2	.....	994.00	Conductor at fault for not having flagman out to protect train	25	(a)
.....	1	.....	.....	2,200.00	Engineman at fault for not stopping when semaphore was against him and not having train under control	19	(a)

a Not given.
b Two days.
c More than fifteen hours.
d Less than seven hours.

STATEMENT OF EDWARD A. MOSELEY, ESQ., SECRETARY OF THE INTERSTATE COMMERCE COMMISSION.

Mr. MOSELEY. Mr. Chairman and gentlemen of the committee, I know how dry statistics are, but before taking the very short time that I will ask your indulgence for I want to give you a few figures relating to this matter. They are very significant.

Between 1893, after this Committee on Interstate and Foreign Commerce had urged the passage of the safety-appliance law and it had become a law, and 1904, which is the latest date that I actually have the figures for so that I can rely upon them, the number of tons of freight carried in this country had increased 75 per cent. The number of tons carried 1 mile had increased 86 per cent. The number of tons in a train (which Mr. Norris spoke about) had increased 67 per cent. The number of train men employed had increased only 31 per cent in comparison. The number of tons carried for each train man employed had increased 33 per cent.

Coming down—I do not want to take too much time, but I would like to submit this to you—the number of men employed in coupling and uncoupling cars for each one killed (other than enginemen and firemen, for that is looked upon comparatively as not their duty) had increased from 349 out of each 1,000 to 660, a decrease of number of men killed in coupling and uncoupling of 89 per cent. The number of men employed as against each one injured in coupling and uncoupling had increased from 13 to 49, a decrease of 276 per cent. The number of train men killed in coupling for each 1,000 employed had decreased 46 per cent, and the number injured had decreased 74 per cent.

Now, gentlemen of the committee, think what that means—the enormous saving of human life that has resulted largely from the enacting of the law which came from this committee known as the "safety-appliance law." And fought as this measure was, most strenuously, I do not believe you can find to-day a man or railroad officer of any standing whatever that will not tell you he is very glad it was enacted.

The progressive railroad manager needs no spur, but there are laggards in every movement, and as the commerce of the United States is so diverse the car which is in Washington to-day will in a few days be in Chicago, and perhaps in a few days more it will reach San Francisco, carrying relief. But that car, let us say, belongs to a railroad about here, and it goes across the country, and unless it has the appliances which the best railroad in the country believes are correct, it is coming in contact with these other appliances, and the result is a chaotic condition, and men are killed and injured. And it was very largely the attempt on the part of railroad managers to improve conditions which resulted in the great loss of life. They would equip their own cars properly, but as those cars were equipped and sent out through the average of the cars of the country, they carried death and destruction into every freight yard of the country.

Again, this enormous increase in the amount of tonnage hauled is owing to the requirement in regard to air. It would be an absolute impossibility to haul the present tonnage of the United States unless there was the percentage of air which is now required, and which the present committee took in hand and saw was enacted into law—Mr. Wanger's bill.

Mr. MANN. You gave the percentage of increase in the freight carried. Have you the percentage of increase in the tractive power of the engines and the capacity of the cars?

Mr. MOSELEY. I could give that to you, Mr. Mann, and would be very glad to do it. The number of locomotives in the country has increased 45 per cent, the number of cars 67 per cent, and I should say the average capacity of the cars has increased enormously, as everybody knows.

Mr. PAYSON. What about the tractive force of the engines, Mr. Moseley?

Mr. MOSELEY. The figures as to the tractive force of the engines, as I say, I have not here, but it was undoubtedly largely increased, and I will furnish the information to the committee. Everybody understands that if you put in more locomotives men have to shovel more coal. It is very different from the condition a number of years ago, when a man did not, as he does now, have to bend his back from the time he starts out until the time he gets in.

I want to show the beneficent effect of this law, a law which has been conceded on all hands to have resulted in the saving of more lives in a single year than were lost in the entire Spanish-American war; and it goes on all the time increasing.

Mr. WANGER. Mr. Moseley, when a railway accident is reported, is any statement made of the number of hours that the different train employees have been in continuous service at the time of the accident?

Mr. MOSELEY. The bill that you reported, Mr. Wanger, authorized the Commission to establish regulations in regard to reports of accidents, and one of the requirements of those regulations is that they shall state the number of hours the men are employed—that is, where it is the result of a train accident.

Mr. ESCH. That is in the rate bill, you know.

Mr. MOSELEY. No; that is in Mr. Wanger's bill, passed last year.

Mr. RYAN. The safety-appliance law.

Mr. MOSELEY. The amendment to the safety-appliance law. I gave that information to Mr. Norris, and I do not want to repeat it.

Now I am coming to this particular bill. I believe in a measure of this kind, and I believe in it in the interests of the railroad as much as I do in the interests of the employees and of the public. I believe what Mr. Norris has stated to be true—that the railroads have lengthened their hours of running between terminals. It is necessarily so. I can not say that they are to blame about the matter. Everybody understands that this country has been pressed in every possible way, and the railroads have to do the business of the country.

Now, you must understand that I am representing nobody but myself, but I want to state this matter as fairly as I can.

Mind you, the railroad employees of the country are not here asking for an eight-hour law. They have not any interest in the eight-hour bill except as it may affect their associates, the men who labor, because they are paid for mileage, and I myself have heard a man say, with pleasure and gratification, that he had earned two months' pay in a month. There are a very large number of these men who, if they knew of this measure, would come down here and protest against it. A lot of them would do it. Why? Because you are shutting off their opportunity to labor, to get all they can out of it. The more mileage, the more pay; and therefore they want it. But the conservative railroad man, the railroad employee who believes that he owes some duty to the public as well as to himself, knows very well that it is a gross outrage to go out on a railroad when he can not keep awake.

Mr. Esch has put in a bill, I understand, providing a standard of sixteen hours and ten. Looking at that measure, I think it is generally about fair. If a man has ten hours' rest, he ought to be able to work sixteen, I think. God knows I have worked a good deal longer; and it is a liberal bill. There are a lot of these men who want to go out and work long hours, fall asleep though they will, and kill a lot of their own associates, and kill a lot of travelers upon railroads and other employees by running into them, or by head-on collisions. The objection I had to the bill which was first introduced by Mr. Esch was that it did not provide a standard, and that where Congress can possibly do it it is for Congress to determine every question of that character. It is, or should be, a legislative act, and not an act of a commission. Let the whole body of the people, as represented by Congress, determine what is fair.

Mr. Esch's bill suggests sixteen hours and ten. Now, when a man wants to go out, and he has not had his ten hours' rest, or when he has been out sixteen hours and wants to go out again for more hours, or make longer runs, or anything of that sort, his employer has the opportunity of saying to him, "I can not do it; it is against the law." And the railroad company which wants to force a man to go out when he should not has the law before it which says "sixteen hours," and does not dare to do it. Why? Because then, gentlemen, if an accident occurs, as a lot of these horrible accidents are constantly occurring on account of this very thing, in what position will a railroad manager be who, without excuse, without an act of God or an unforeseen emergency, sends men out on the train or allows them to go out and kill a lot of people in violation of law?

I believe it will be one of the rarest things to have a prosecution under this bill should you make it a law. Railroad managers are not going to put their necks in the noose. What is a hundred-dollar

fine? It is nothing. But public opinion is everything; and if a railroad manager permits or allows or requires a man to go out and work longer hours than the law allows, and the result is killing a lot of his fellow-men, his punishment is sufficient; it is greater than the fact that his company pays a hundred-dollar fine. It is the fact that by putting it on the statute books you have made the gauge of labor; and in that respect I believe the measure is right.

I do not want to take up any more of the time of the committee, but I will be glad to answer any questions that may be asked.

Mr. BURKE. Have you any statistics, Mr. Moseley, regarding these accidents that have occurred since the law was enacted requiring a report as to the length of hours that the train men were employed? Have you any statistics as to what effect, if any, that law has had?

Mr. MOSELEY. Yes, Mr. Burke, I have them; and here is something on that very subject. The fact is that we have believed that it was advisable to keep Congress informed as to these matters, and when we get out our monthly bulletins we send one to each member of Congress. In one of those bulletins we state:

> In nearly or quite every accident bulletin that has been issued it has been necessary to record one or more collisions due to the mistakes or negligence of men who have been on duty so many hours as to raise the supposition, if not the presumption, that they have become drowsy, if they have not actually fallen asleep; and cases in which engine men are definitely reported as being asleep on duty are common.

I will not take any more time on that line.

Mr. MANN. You say the men are paid by mileage?

Mr. MOSELEY. Yes, sir.

Mr. MANN. To what extent are the railroad men of the country paid by mileage, and to what extent are they paid by round trips, or to what extent by the hour?

Mr. MOSELEY. Telegraph operators are paid by the hour, you know; but they do not——

Mr. MANN. I refer to train men.

Mr. MOSELEY. All train men in the United States—I do not know any that are not paid by mileage.

Mr. MANN. You do not mean to say that Mr. Norris's train men, who are forty-one or thirty-five hours late, are paid simply so much per trip without any consideration for the extra time?

Mr. MOSELEY. Yes; sometimes.

Mr. CUSHMAN. Does not that law apply to the engineer and the fireman, but not to the conductor and the brakeman?

Mr. NORRIS. The conductor, brakeman, and every mother's son.

Mr. MANN. Is it not a fact that where they are at work overtime they are always paid for that? Are they not paid for overtime?

Mr. MOSELEY. Yes; they are. They are paid for overtime. I am not advocating their interests.

Mr. MANN. Then, I say, they are not paid by mileage exclusively? That is what I am trying to find out.

Mr. MOSELEY. Oh, no. The fact is that there is a schedule of miles. On the road which my friend here, Judge Payson, has the honor to represent I understand that the time is sixteen hours and ten. That is their agreement, and all these things are largely matters of agree-

ment with the men. There is a contract between them in almost every case.

Mr. MANN. But we would like to be informed, if we can be, about this. You make the bald statement that all railroad train men are paid by mileage. Now it develops that they are not paid by mileage exclusively.

Mr. MOSELEY. No; they are not.

Mr. MANN. Now, we would like to know if we can——

Mr. MOSELEY. Do not imagine for one moment that I want in any way to conceal any fact.

Mr. MANN. Oh, I understand that.

Mr. MOSELEY. The point is simply this: They are paid by mileage, and that is all, except that for their overtime, on certain roads, at least, they are allowed so much money.

Mr. ADAMSON. But their regular time is first based on mileage.

Mr. MANN. I understand that.

Mr. MOSELEY. If a man is kept out more time, he gets more money, in a good many cases.

Mr. MANN. The regular time is based on making so many miles in so many hours?

Mr. MOSELEY. Yes.

Mr. MANN. Now, what I want to get at is how they are paid, if anybody knows.

Mr. MOSELEY. They are paid just as you have stated.

Mr. MANN. But I have not stated how they are paid. I have not seen anybody here yet who could tell us or who did tell us.

(Mr. Fuller started to confer with Mr. Moseley.)

Mr. WANGER. Let Mr. Fuller tell us. He can tell us better than he can tell somebody else.

Mr. FULLER. If you will excuse me, then, we will say, for instance, that 100 miles is considered a day's run. Now, if they are over ten hours making that 100 miles, they are allowed at the rate of 10 miles for every hour above that.

Mr. BURKE. Does not that apply only to engineers and firemen?

Mr. FULLER. No, sir; it applies to conductors and trainmen also. Now, do I make it clear?

Mr. MANN. You make it clear, Mr. Fuller, if you are right about all roads.

Mr. FULLER. I do not say that applies to all the roads.

Mr. MANN. But that is generally the case?

Mr. FULLER. West of the Mississippi River they are practically entirely upon a mileage basis. In this part of the country, where the traffic is more dense, they are not controlled so much by mileage, but rather by hours.

Mr. GAINES. Are not the brakemen generally paid by the month?

Mr. BORLAND. On some of the southern roads they are. Still, they have to run so many miles for a month's work.

Mr. MANN. So that it is based on the miles anyhow?

Mr. FULLER. Yes; no matter whether it is a day or month.

Mr. BORLAND. If they are paid so much a month, they have to run so many miles to make it.

Mr. MANN. It is really based, you see, on the mile after all.

Mr. MOSELEY. May I file these statements with the committee?

The CHAIRMAN. Yes.

(The statements referred to will be found at the end of Mr. Moseley's remarks.)

Mr. ESCH. As a matter of fact, Mr. Moseley, the Brotherhood of Railroad Employees have contractual relations with their respective roads, have they not, as to the hours?

Mr. MOSELEY. Pretty largely all over the country.

Mr. ESCH. The rule is sixteen consecutive hours; that is about the average throughout the country?

Mr. MOSELEY. I can not tell you as to that. I will try and find out, but I know that is so in the case of the Southern Pacific.

Mr. WANGER. You mean as a maximum?

Mr. MOSELEY. The maximum is sixteen and ten.

The papers referred to by Mr. Moseley during his statement are as follows:

MEMORANDUM ON HOURS OF LABOR.

Reports made to the Commission by railroad companies, under the accident law of 1901, cover 225 collisions and derailments, in which 51 persons were killed and 308 injured, where the employees involved had been on duty continuously for periods ranging between fifteen and forty-eight hours.

Thirty-seven of these casualties were directly caused by employees going to sleep on duty, and the presumption is that many of the others were directly or indirectly caused by excessive hours of labor.

In the personal-injury reports made to the Commission, casualties not due to collisions or derailments, 57 accidents are reported in which the employees concerned had been on duty fifteen hours or more. These accidents total 17 deaths and 51 injuries, and 24 of them were directly caused by employees going to sleep on duty.

Of the 24 accidents caused by men going to sleep on duty the following report is typical: "Out flagging; sat down on rail and is supposed to have gone to sleep." This man had been on duty nineteen hours, and his nap at his post of duty cost him his life. The train that he had been sent back to flag struck his and crushed out his life.

(See Accident Bulletin No. 18, pp. 10 and 11; Eighteenth Annual Report, p. 105; Nineteenth Annual Report, p. 78.)

Statement of conditions in 1893 and 1904.

Item.	1893.	1904.	Increase 1904 over 1893.	Per cent of increase.
Number of cars in freight service	1,013,307	1,692,194	678,887	67.00
Number of locomotives in freight service	18,599	27,029	8,430	45.32
Number of tons carried	745,119,482	1,309,899,165	564,779,683	75.80
Number of tons carried 1 mile	93,588,111,833	174,522,089,577	80,933,977,744	86.48
Average number of tons in train	184	308	124	67.39
Number of trainmen employed (other than enginemen and firemen), including switch tenders, crossing tenders, and watchmen	146,544	192,641	46,097	31.45
Number of tons carried for each trainman employed, etc	5,085	6,800	1,715	33.73
Number of tons carried 1 mile for each trainman employed, etc	638,635	905,945	267,310	41.86
Number of freight cars for each trainman employed, etc	7	9	2	28.57
Number of train miles run for each trainman employed, etc	5,764	5,231	a 533	a 9.25
Number of enginemen and firemen employed	79,140	107,455	28,315	35.78
Number of switch tenders, crossing tenders, and watchmen employed	46,048	46,262	214	.46

a Decrease.

Statement of conditions in 1893 and 1904—Continued.

Item.	1893.	1904.	Increase 1904 over 1893.	Per cent of increase.
Number of trainmen employed in coupling and uncoupling cars for each one killed (other than enginemen and firemen), including switch tenders, crossing tenders, and watchmen	349	660	311	89.11
Number of trainmen employed in coupling and uncoupling cars for each one injured (other than enginemen and firemen), including switch tenders, crossing tenders, and watchmen	13	49	36	276.92
Number of trainmen killed in coupling and uncoupling cars (other than enginemen and firemen), including switch tenders, crossing tenders, and watchmen, for each 1,000 employed	2.8	1.5	a 1.3	a 46.43
Number of trainmen injured in coupling and uncoupling cars (other than enginemen and firemen), including switch tenders, crossing tenders, and watchmen, for each 1,000 employed	77	20	a 57	a 74.03

a Decrease.

STATEMENT OF L. E. PAYSON, ESQ., RESIDENT COUNSEL FOR THE UNION PACIFIC AND SOUTHERN PACIFIC SYSTEMS.

Mr. MANN. Mr. Payson, you were a member of Congress for how long?

Mr. PAYSON. I was a member of Congress for ten years from the Ninth Congressional district of Illinois.

At the time of coming before the committee I was in ignorance of precisely what would be presented to it for consideration. I had assumed that the so-called Esch bill, which was under consideration when I was here about a week ago, and the committee being addressed by Mr. Fuller with reference to it, would be the pending order. I had some observations which I thought would be of value to the committee with reference to that bill; but I am advised since the session has begun, in the hearing of most of you who were present, that that bill is abandoned and a new bill presented by Mr. Esch to-day, the fundamental propositions in which are a hard-and-fast rule of sixteen hours of labor as a maximum amount and ten hours of rest following that. That is the feature of the bill. In connection with that is the bill to which Mr. Norris has addressed himself.

Now, Mr. Chairman, before coming to Congress it was my good fortune in a professional way to be in the legal departments of the Chicago, Alton and St. Louis Railroad Company and the Illinois Central, both of which lines ran through my district; and I was local counsel for both those corporations and had somewhat largely to do with matters outside of the several counties in the district in connection with those two corporations. I went out of Congress to take the position which I now occupy in a professional way. Therefore, with the exception of the time that I was in Congress, I have been connected with railroad corporations in the legal department all my prefessional life. And I say to you, Mr. Chairman and gentlemen, that if you were called upon, in addressing yourselves to legislation of this character, to act upon the assumption that has been presented here by Mr. Norris with reference to the Burlington road, and ex-

pected to legislate intelligently for the railroad interests of this country, it would not be long before you would be in the Slough of Despond.

I do not dispute the fact that Mr. Norris asserts here; but I had never before heard, directly or indirectly, that a railroad in this country was operated as it is said that the Burlington Railroad Company is operated under the Hill management. I happen to know in the case of the Union Pacific and the Southern Pacific systems—and I may say in passing that they embrace something over 15,000 miles of single track; that does not include sidings or anything of the kind, but simply the mileage over which interstate commerce passes, a fraction over 15,000 miles—that they have schedules for the freight trains which are just as distinct and clear and which they intend and try to observe with as much regularity as the schedule of every passenger train on the run.

Now, I pass that matter; I do not care to discuss the evils that grow out of the operations of the Burlington system as depicted here by Mr. Norris. Assuming that that is true, there is room for special legislation in the different States through which that road runs. I do not see how what he suggested here has any relevancy one way or the other to the propositions contained in any of these bills, and so I pass that. But, Mr. Chairman, there are in this country, in round numbers, about 215,000 miles of interstate commerce roads over which the Interstate Commerce Commission assumes some jurisdiction. When I say to you that the management and operation of that immense system of transportation calls for care on your part when you undertake a radical interference with existing conditions, I only state what is self-evident to every member of this committee as a business man. And the operation of these roads, successful as they are, as we all know—and I pass for the moment any reference to individual accidents which now and then occur—the operation of this magnificent system of transportation has not been a matter that has grown up by pure accident. It has grown up under the management of the best brains of this country, and it has grown up with a twofold idea always in mind: Primarily, the business is not run for pleasure, but for the profit of the men who have these millions of dollars invested in it; and secondly—and only secondly because of the order in which I happen to present it—with care and desire on the part of the railroad people for the safety of their employees as well as for the public service.

What is the practical operation of the management of these roads? Let us see what it is, first.

Everybody who has traveled over a railroad line more than once knows that there are certain spaces along the road that are termed "divisions," and at the end of each division there is more or less of a change in the character of the crew. Those divisions are always—and I measure my words when I say it—provided with reference to two things, and two only: First, economy in the management of the road; second, the convenience and comfort of the men themselves. Some of these divisions are longer and some shorter, for the reason that nine out of every ten, ninety-nine out of every hundred railroad men will say to you that they would rather have a little longer division and work an additional hour or two or three hours of time to get to some place that amounts to something, where they may have

their homes and social surroundings and social privileges and that sort of thing, than to have a division end in the midst of a desert, although the hours of labor might be shortened if the division run were shortened. But in almost all the roads in this country, Mr. Chairman, it has happened, by reason of the growth of the country and the necessities of cities and towns and villages for the transaction of the country's business, that these divisions are not so very far apart.

Take it on a line with which Mr. Mann, the gentleman from Illinois, is very familiar—the Chicago and Illinois, in my State—the first division for passenger runs was from Chicago to Bloomington, 125 miles; the next was from Bloomington to Springfield, practically about the same thing; then it ran from there to Alton, and then from there a short division into St. Louis. The runs were short. Nobody ever complained with reference to the length of time that was occupied upon those runs. And always, Mr. Chairman, invariably, this whole country over, wherever there is a long run, requiring more than ten or twelve hours of time, there is an increase in the lay off which is always given the men at the end. There is not simply a rule of eight hours or ten hours. I can cite you to instances on the Southern Pacific Road where there is a lay over of eighteen and twenty hours; and on one division, the Tehachapi division, in California, there is a lay off of sometimes twenty-four hours at one time. The railroad companies, as a rule, are not after every bit of physical labor that can be exacted out of men. They are treated as human beings practically everywhere so far as my observation extends; and that is the rule that obtains everywhere.

Now, how has this thing been regulated heretofore? It has been found by experience that the men of the railroad companies can manage it themselves. Who knows better what the best thing is, with reference to a lot of train employees—say, for instance, men employed as brakemen on freight trains—who knows better what is best to do on any given line of road than the men themselves? They get together with the executive officers of the company, and they agree as to what the maximum number of hours of labor shall be, treating a number of miles as a train unit, as it is called in this calculation—and this will give my friend Mr. Mann a little light upon the question he asked a moment ago. On all of our systems 11 miles for a freight train is counted the train-hour unit, and the men are not paid by the day, but by the miles run. But 11 miles is counted the hour unit in the calculation of the day's labor, and they agree how much it shall be.

Mr. MANN. That is, you mean, the 11 hours is the day's pay?

Mr. PAYSON. No; 11 miles is the hour unit of an hour's run; and then it is so many times that. If it is ten hours a day, 110 miles would be counted as a day's run. If the day was longer than that, using that for illustration, they would get extra pay for the overtime. Usually it is time and a half pay for the overtime. [After a conference:] I am advised by our friend from New York that our people pay time and a half for overtime, and hence the desire on the part of very many men to work overtime and get extra pay; and there is an extra allowance above the ordinary hourly fraction if overtime is worked.

In what I have to say, Mr. Chairman, I am not assuming any special technical knowledge with reference to train operation or train management; but these things are of such common universal knowledge all over that nobody can have to do with a railroad corporation intelligently for a year or two or three years without absorbing, if he is simply like a sponge, something with reference to it. And I happen to know that this matter of labor is arranged between our own companies and the men upon this basis of sixteen hours as a maximum amount of labor, and ten hours of rest. If that is exceeded, they get paid for it; if it is less than that, of course there is no question with reference to it. In the case of some other roads that my attention has been called to, it is down as low as fourteen; but fourteen hours is the lowest number of hours as a maximum amount that my attention has been called to, and one or two of them run as high as eighteen.

Mr. ESCH. The last bill, Judge, makes it sixteen and ten.

Mr. PAYSON. Sixteen and ten—that is exactly in accordance with our own schedule.

Mr. ESCH. That is your rule now?

Mr. PAYSON. Yes, sir; that is exactly in accordance with our own schedule. But I am coming now to some objections to the bill which I would like to suggest in these observations.

So that is the way the matter has grown up, Mr. Chairman. The men themselves regulate it; and there is no necessity, in my judgment, for any legislation of this character, at any rate within the circumscribed provisions of this new Esch bill.

It seems to me, Mr. Chairman, that undertaking, in the first proposition, to make a hard-and-fast rule with hardly an exception, in legislation which makes it a crime to violate a contract which in and of itself is not only perfectly innocuous, but perfectly satisfactory to everybody engaged or interested in it, requires pretty careful consideration as to what the exceptions to that statute should be. Now, addressing myself to the Esch bill, as to what I mean by a practical illustration of that, a train starts out with a sixteen-hour maximum on our own line, and gets laid out on a side track by reason of a hot box. That is a thing that may happen to any railroad management anywhere, and nobody can guard against it even where the utmost care is taken. At the end of divisions and at prominent places between two terminal points men go along and lift up the covers over the journals and look in, and punch into the waste, and pour in oil, and all that sort of thing; but every now and then a box will get hot, and the hotter it gets the longer it takes to cool it, and you have to stop your train to do it, and sidetrack it, and if it is on an engine it is worse than it is on a car.

Now, then, under the terms of this bill, if a train is sidetracked by reason of a succession of hot boxes, so that the train should happen to be out longer than the time limit provided, nobody can help it; nobody can prevent it; nobody is harmed by it. Yet, every man connected with the executive force of that railway company permitting these men simply to sit still until two or three of them cool off the box with ashes and cold water is made a criminal.

Mr. ESCH. Judge, was your attention called to the last proviso?

Mr. PAYSON. As to unforeseen accidents?

Mr. ESCH. As to "unforeseen or unavoidable occurrences."

Mr. PAYSON. Well, now, you get down to whether——

Mr. MANN. Is a hot box an accident?

Mr. PAYSON. Now you are asking a question which raises a question of doubt; and a man is made a criminal if he happens to guess it the wrong way.

Mr. MOSELEY. No.

Mr. PAYSON. Yes; I repeat, a criminal. He is punished by fine, and in default of fine he may be imprisoned under this bill.

Mr. MOSELEY. No; this prosecution is not against anybody; it is against the corporation.

Mr. PAYSON. Well, the corporations as well as the agents are within the bill; somebody has to be prosecuted. When a thing is punishable by a fine which may possibly result in imprisonment, it comes pretty near to being a criminal law; and so, as I say, if you are going to adopt that sort of thing, there ought to be some sort of an inquiry——

Mr. MANN. This runs both against the carrier and the official or agent.

Mr. SHERMAN. It runs against the individual as well as against the corporation. What is a hot box, if not an accident?

Mr. PAYSON. Well, the term "railroad accident" is broader than that is generally understood.

Mr. RYAN. I know; but what would that particular thing be styled? What would it be if not an accident?

Mr. ADAMSON. A casualty.

Mr. TOWNSEND. If I understand you correctly, you prefer to leave this matter to the railroads and the men themselves?

Mr. PAYSON. Yes, sir.

Mr. TOWNSEND. Do you not imagine that the public have a right to be protected against the cupidity of men, the desire of men to earn money at the expense of the rest that is necessary for the proper care of the public—talking now from the public standpoint alone?

Mr. PAYSON. Yes, sir; I do.

Mr. TOWNSEND. If it is a fact, as suggested by Judge Norris, that these conditions do maintain to some extent, at least that men are being worked thirty, thirty-five, or forty hours, do you not imagine that there is a menace to the safety of the public in such a state of affairs?

Mr. PAYSON. As you put it, yes, sir. Of course it would be improper for me, in this presence and without actual knowledge of the situation, to dispute any statement of fact which is made here; but I would be glad to put up one-half of what I happen to be worth as the result of fifty-odd years of active, hard-working business life if a single instance of that kind was ever charged up to the Union or the Southern Pacific Railroad companies, where a man was forced to go out when he had already worked thirty consecutive hours. I never heard of such a thing. I have made diligent inquiries since this was started, and the most that I can find with reference to this sort of thing is practically what has happened in the recent terrible disaster that occurred in Colorado, where there were two men doing the work, and one man, who had been on duty a long time, to accomodate the other agreed to do the second shift that the other might go off to a dance, and nobody was responsible but the two men. But it was a deplorable accident.

But you can not by general legislation of this kind cover every possible case of incident or accident that arises in a great, busy world like this. You can not do it by an act of Congress. You can not do it.

Mr. TOWNSEND. You might minimize the danger.

Mr. PAYSON. As to the minimizing, that comes down to another phase of the matter that I intended to take up a little later. But why is not some penalty visited upon some of the men who do these things? If a man, after having worked his entire shift, takes the plance of another that he may go off to a dance, as was the case in the case of the Colorado accident, why should not some punishment or penalty be meted out to him instead of upon the agent of the railroad company, who knows nothing about it, who is in absolute ignorance of the condition?

Mr. ESCH. Does not the train dispatcher know all the operators on his line?

Mr. PAYSON. As to the man that goes on duty, he may or may not.

Mr. ESCH. Does not every operator have his own letter?

Mr. PAYSON. I understand so; but in this case it seemed that he did not. It seemed that he did not.

Mr. RYAN. That ought to be a railroad regulation.

Mr. PAYSON. It ought to be a railroad regulation; I agree as to that. But here, under this bill and under every bill that has been here thus far, there has been an attempt by this legislation to cover the entire business interests of the country—as I say, systems covering about 215,000 miles of transportation, with thousands of millions of dollars invested—to reach a state of case which is so purely exceptional, so rare of occurrence, that some special legislation addressed to it rather than the general subject ought, it seems to me, to obtain.

As to just what that ought to be, I say here frankly that I do not know. I am not an expert railroad man. I had had the promise of the presence here to-day of the manager of train operation, the general manager of the Southern Railway Company, Mr. Spencer. I had a talk with him the other day. Our own road is so remotely located from here that I could not very well ask any of our men to come down here; so I have talked with the Pennsylvania people and the Southern Railway people and the Baltimore and Ohio people with reference to this hearing, and I am authorized to speak for the Pennsylvania system as well as our own, and I had the promise by the Southern Railway Company that one of their expert men would be here to give the railroad side, if you can call it the railroad side—and there ought to be a railroad side if what has been presented here by Mr. Norris is the other side—as to what is the remedy for these exceptional accidents and occurrences by which human life is endangered.

The CHAIRMAN. If it suits you to interrupt your statement now, it is time for us to adjourn.

Mr. PAYSON. Nothing interrupts me, because what I have to say is merely from a sort of offhand general knowledge of things. I will endeavor to have somebody here at the next meeting who knows practically as to the matter of operation.

Mr. MOSELEY. Mr. Chairman, may I ask Judge Payson one question? That is this, Mr. Payson: Do you characterize a penalty

which is recovered by civil action a criminal suit or a criminal act? You say this is making criminals of people, and that gives a wrong impression.

Mr. PAYSON. Oh, well, Mr. Moseley, where a bill like this provides for a fine prosecuted by the United States——

Mr. MOSELEY. No; it is not prosecuted; it is a civil action. If it is not, why, then I am wrong.

Mr. BARTLETT. The Supreme Court decided that it was a criminal action, anyhow.

(The committee thereupon went into executive session, after which it adjourned.)

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Tuesday, May 1, 1906.

The committee met at 10.40 o'clock a. m., Hon. William P. Hepburn in the chair.

The CHAIRMAN. Have you concluded, Judge Payson?

Mr. PAYSON. No, sir; if I may have the attention of the committee.

The CHAIRMAN. We will be glad to have you proceed.

STATEMENT OF HON. LEWIS E. PAYSON—Continued.

Mr. PAYSON. Mr. Chairman and gentlemen, when the committee rose at the last session I was saying that in my judgment there was really no necessity for this legislation. I appreciate, I think, as fully as anyone the deplorable character of these railroad accidents when they occur, but I shall insist later on that the records show that they are so infrequent that they do not justify this legislation, and, in addition to that, the evils intended to be reached, such as they are, of carelessness or inattention to duty on the part of railroad employees, are such that they can not be cured by legislation; that the situation and condition of railroad management are such in this country that it will not be aided in any way, much less perfected, by any of the provisions of this bill, and I was about to say, the thought being in my mind then of the statement which Mr. Moseley put into the record, that there is nothing which is so unreliable as percentages of statistics in bearing upon questions of this or others of like character.

Among other things that Mr. Moseley stated and had a paper in support of was the percentage in railroad travel, of increase in transportation, of increase in passenger carriage, and the increase in percentages of different phases of railroad traffic, and among other things emphasized in a way the fact that there had not been a relative increase of train employees in proportion to the increase of transportation and passenger carriage. Well, in and of itself that might impress somebody, and it has been said by some one in the course of this discussion—or rather the inference could be drawn from what some one has said in the course of this discussion—that on the part of the railroad companies there is a tendency to economy in the employment of as few men as might be to transact the business, and therefore in a way that they are sort of censurable.

Now, as to Mr. Moseley's first percentage. Of course it is a matter of common knowledge on the part of everybody that railroad transportation matters have changed wonderfully in the last fifteen or twenty years, and while it is true that the proportion of employees is much less than it used to be, that is due to a few facts which you will all recognize as soon as I state them. Instead of the light locomotives used a few years ago, that would only haul 14 to 16 or 18 cars, we now have the heavy locomotive, the powerful locomotive, that will haul 40 or more cars. Then, again, in the handling of trains, instead of a lot of brakemen on top of the train applying the hand brakes, air is used to control the movement of trains. That not only diminishes the actual number of men necessary for that sort of work, but there is no necessity for increasing the proportion on that. And then, again, in railroad construction, too, the tendency is everywhere, by the reduction of grades and the reduction of curves and that sort of thing, to make transportation easier, and the volume is transported with much more ease by a less number of men, even, than when the proportion was much larger. So that does not go for anything.

Mr. TOWNSEND. The expense of operation is considerably less?

Mr. PAYSON. And the expense of operation is much less; much less.

Now, in support of the idea which I have had and the suggestion which I make, that the number of accidents which have happened, growing out of a condition which this bill is supposed to meet, as a matter of fact, Mr. Chairman and gentlemen, in running over the records of the Interstate Commerce Commission they are comparatively few; comparatively few. I hold in my hand the reports of the Interstate Commerce Commission for the last year. In practice they are issued quarterly, as you know. In running over these bulletins which have been issued, there is not one accident reported in the entire year by the Interstate Commerce Commission where it would come within the provisions of this bill.

Mr. TOWNSEND. Who makes these reports?

Mr. PAYSON. The railway companies and special agents; the railway companies generally.

Mr. TOWNSEND. Are the railroad companies liable to report negligence on their part?

Mr. PAYSON. They are; they are required to report it, and I may say that they do it. At all events there has never been any complaint on the part of the Interstate Commerce Commission that the reports required by law have not been fully made—if that meets your inquiry.

Mr. TOWNSEND. If a railroad company made a report that it had an insufficient number of men or overworked its men it would lay the company liable for damages.

Mr. PAYSON. Civil damages, yes; whether that was reported or not they would be liable under such circumstances; but the facts as to the case are supposed to be reported—that is, the engineer reports to the company when he left his last terminal and when he turned in and so on; and the same report is made in regard to the fireman. All those are facts which are reported finally to the Interstate Commerce Commission; for instance, whether they only had four men when they ought to have had five; whether a man is out twenty hours when he ought only to have been out sixteen hours——

Mr. TOWNSEND. The reason I bring this to your attention is this. Please see if this has any bearing on it. I have two damage cases in

mind where the reports claim that there was no negligence on the part of railroad company or no violation of the law. The proof on the trial showed that the engineer and fireman were both asleep on the train that overran a semaphore, the derailing apparatus, contrary to law. That was not reported.

Mr. PAYSON. Well, it should have been.

Mr. TOWNSEND. I was wondering how many of those cases there are?

Mr. PAYSON. I am unable to say.

Mr. ESCH. Is it not a matter of fact that the Commission complains about the railroads not making reports, and that when they do come in they are insufficient? And do not some of the reports of the Interstate Commerce Commission call attention to that fact?

Mr. PAYSON. Prior to the passage of this present law there were complaints of that kind, but nothing of that kind appears in any of the bulletins for the past year, so far as I know, and I have made inquiry at the Interstate Commerce building.

Mr. MANN. Outside of the question of the reports, do you claim that a man ought to be required to work more than sixteen hours a day when in a responsible position where sleepiness or tiredness might cause a wreck?

Mr. PAYSON. I would not like to answer that as you put it, Mr. Mann, because in the course of railroad operations for the last ten or fifteen years, going back no further, the usual course all over the country is to require an average of about sixteen hours maximum on duty. Some railroads make a maximum limit of eighteen hours, some as low as fourteen, but the average among them all is sixteen. It is sixteen as to the Southern Pacific, as to the Union Pacific, and I am told the same as to the Southern Railroad. I am told by the representatives of the Pennsylvania Railroad, who are present in the committee room here to-day, that the maximum hours on that road are sixteen.

Mr. MANN. Is that the usual run?

Mr. PAYSON. The usual run, that is the maximum day's work that can be exacted.

Mr. MANN. If the train is late then it is over that?

Mr. PAYSON. It is overrun, but the ordinary runs do not consume so much time; that is the maximum amount which may be required under the rules. The average runs are much less, but from various causes, as I am told, the average schedule time is overrun for various causes, but it may not exceed the limit fixed in the rule of the railroad company.

Mr. RICHARDSON. Where that is the average, how much time are they allowed rest between runs?

Mr. PAYSON. The lay over as a rule is largely more than the scheduled time. If the runs are sixteen hours, then the lay off is sometimes a day and a half.

Mr. RICHARDSON. Is it not a fact that many States have regulated that matter?

Mr. PAYSON. I understand so, but I do not speak with knowledge about that.

Mr. RICHARDSON. For instance: In Alabama they do not allow them to work over twelve hours on a stretch, and then they must have eight hours' rest.

Mr. MANN. If you will pardon me, I do not think any of us require any reports from railroad companies or from commissions or from anybody else to come to a conclusion about this. We have some idea of the effect of working sixteen hours continuously, every man here knows from his own experience how hard it is to work when he is tired out and sleepy.

Mr. PAYSON. Very true.

Mr. MANN. Now, what harm will it do to the railroad managers in handling trains to forbid them to operate so that they will have their employees working more than sixteen hours, when everybody knows that a man can not do good work ordinarily after he has been on duty continuously for sixteen hours?

Mr. PAYSON. First, as to the general proposition why the railroad companies would object to that, our objection in a general way is to Congress making it an entering wedge for all sorts of regulating legislation. We think the railroads regulate themselves just as well as Congress can regulate them, and in this matter of ours we think the roads regulate it——

Mr. MANN. That might be so in your case—that you regulate it as well as the law, but suppose here is a road that habitually endeavors to get more out of its men and endeavors to require them to work a much longer period than sixteen hours, or, after a very short rest, requires them to go on duty for a sixteen-hour period again; how will that reach that without reaching you?

Mr. TOWNSEND. And the coercion of the men, too, urging it on them?

Mr. PAYSON. That state of affairs does not exist, so far as I know, in any railroad in this country. So far as I am advised no such thing exists. Before these hearings conclude some practical men will be here, men from the Pennsylvania Railroad and the Baltimore and Ohio and other roads, that will be able to answer these practical questions. I only shed a borrowed light on that side of the question.

Then, as to the suggestion that the railroads aid in that by coercing the men to do that, that does not obtain. To make myself more explicit, it was intimated here that it was to the advantage of the railroad company to have as few men as possible with reference to the conduct of their business, because it would cost less money to do that.

Upon every trunk line in this country, as I am advised, and as to many of them I speak with knowledge, the question of days and hours does not cut that figure [the witness snapping his fingers]; the pay of the employee is by the miles run, and so it does not make any difference to the railroad company; if ten engineers can do the work now on any given line it doesn't matter to them whether eight men do it or twelve do it; the only difference would be the eight would get as much pay as ten would for doing the same work. Upon every railroad in this country, so far as I am advised, and about some of which, I say, I speak from personal knowledge, I know it is upon the basis of miles run that the men are paid, and therefore there is no inducement on the part of the railroad company on the score of economy to exact more work out of the men than they are competent to do.

Mr. MANN. That statement has been made several times, that the basis of pay is the miles run. I am informed this: The tendency of the railroad in recent years has been to very largely extend the length

of the local runs, and that the employees for local runs are not paid by mileage; that many of these local freights that used to run 70 miles or such a matter now often run 125 miles, and that the crew are not paid by mileage any longer——

Mr. PAYSON. That is news to me.

Mr. MANN. But on a day's pay basis.

Mr. PAYSON. That is news to me, if it is so. I know with our road—and I have a copy of the regulations here—the pay is by the mile, and where there is a necessity for any purpose of using the hour as a unit——

Mr. MANN. I would be glad to see those regulations.

Mr. PAYSON. I would be glad to furnish them.

Mr. RICHARDSON. Did I understand you to say that you thought it best for Congress to leave all such matters as this to be controlled by the railroad companies themselves?

Mr. PAYSON. I do; yes.

Mr. RICHARDSON. Take that as a precedent. Do you think it a good precedent? Would it not apply to all other corporate interests in this country?

Mr. PAYSON. I don't think so.

Mr. RICHARDSON. Will you give your reasons why?

Mr. PAYSON. First, I regard it as a pretty serious question now as a matter of law, whether what is intended by this bill rises above a police regulation, and as such that would be for the States.

Mr. RICHARDSON. In connection with that, you think equally as much that they ought to be allowed to regulate rates without any law?

Mr. PAYSON. No; I do not say that.

Mr. RICHARDSON. Give the reasons, please, for your difference of view between those two propositions.

Mr. PAYSON. To enter into a discussion of the rate question, of course common experience teaches that as to the rate you are dealing with the rem, you are dealing with the thing itself, what the corporation is organized for, to carry freight or passengers, and it is bound to do it for reasonable charges for the service rendered, and in the case of unreasonable charges there ought to be a power somewhere to regulate it. That is the whole business—the root of the whole transaction—and the scope of the whole railroad business is what the quid shall be for the quo, and therefore I think it is a proper subject of legislation on the part of Congress as to interstate commerce, that the rates should be regulated to guard against unreasonable charges between the company and the individual or unjust discrimination between the localities and the people.

Mr. MANN. You just said before that it was a matter of no concern to the railroads of the country whether they had ten engineers or eight engineers to do the work.

Mr. PAYSON. On account of the economy.

Mr. MANN. But is it not a matter of great concern to the public if ten engineers are required that there be ten employed rather than that eight only be employed and that those shall be overtaxed?

Mr. PAYSON. Certainly; but who is a better judge than the men themselves of the companies that employ them?

Mr. MANN. I think the public is a better judge.

Mr. PAYSON. I don't think so, with all due deference. From the statements made here, what is better in the way of effective and

proper management of a great railroad corporation than the combined intelligence of the managers and of the employees? Let me repeat that I have made diligent inquiry from different trunk lines, and that, so far as I know, these arrangements as to hours are perfectly satisfactory to the men.

Mr. RICHARDSON. You have to take into consideration the temperaments and dispositions of different men. You find some men eager and anxious to accumulate money, and they overtax themselves more than I would, for instance, who have not so much ambition in that way.

Mr. PAYSON. Yes, sir; undoubtedly.

Mr. RICHARDSON. Therefore you are laying yourselves liable to the danger coming from that man's cupidity, and so endanger the lives of your passengers.

Mr. PAYSON. Yes; but the question comes there whether the railroad companies of this country indulge in that sort of thing or tolerate it when they can prevent it, and I am told by the men I have talked with (and with representatives of many of the trunk lines here), and they universally say that that is universally discouraged on the part of the officers, and nobody is permitted to do that when they know it. One of the rules, for instance, of the Southern Railway is that if the maximum hours' work is reached midway in a run it is the man's right and duty to quit there, and they have to furnish a new man if they demand it. That is in the printed regulations of the company that I will be glad to furnish.

Mr. TOWNSEND. The fact is they do not do it in a great many instances, is it not?

Mr. PAYSON. It may be; there are exceptions to all rules. And the fact that men go to sleep on duty and so on does not come from cases of too long hours. I remember one such case that came under my observation when I was connected with the legal department of the Chicago, Alton and St. Louis Railroad Company, and that was the great Sag Bridge disaster on the Alton road. I don't know whether most of you gentlemen are old enough to remember about it, but it was the worst disaster of the kind that I remember of ever occurring in the Mississippi Valley. I had to do with the adjustment of damages in that case. The accident occurred in substantially this way:

The St. Louis flier into Chicago had left Lockwood, 10 or 12 miles from Sag Bridge. The night operator had to go on at 8 o'clock and stay on duty until the next morning. He was invited to a dinner by a neighbor and had come from that dinner and went on duty with two or three cigars in his pocket. Nothing to do at the station except to receive train orders—no traffic—and about half past 10 or 11 came an order for a freight train to stop there to await the train north from St. Louis. With the dinner and his cigars he dropped off into a doze and forgot to deliver the order. He had been on duty only about three hours and the worst disaster occurred, so far as I know, that ever occurred in that part of the country. I don't pretend now to say how many hundreds of thousands of dollars it cost.

Mr. MANN. Was not that partly because he was up late the night before?

Mr. PAYSON. No; he was the nightman.

Mr. MANN. I thought you said he was off at a party.

Mr. PAYSON. I say he went to a dinner party at 6 or 7 o'clock, ate a hearty dinner, and the click of the instrument got monotonous and he dropped off into a doze. He was on duty the night before the ordinary number of hours, less than twelve, probably, and he went off to sleep. Instance after instance is given here in these reports of the Interstate Commerce Commission where men have been negligent as to duty and have gone to sleep and engineers have failed to notice stop signals, even under a good block system, when the hours of duty had been comparatively short.

Well, we undertake to analyze that, and say, How does that happen? To me a very sensible reason for it happening in cases that appear almost inexplicable at first glance is this: Railroad travel, no matter what you think about it when you are engaging in it, is constantly attended by an immediate impending danger. There is danger connected with it from the time the train leaves the station until you reach your terminal. Here we get into a train that pulls out from Washington, and it is soon going 30 or 40 miles an hour. What is between you and me and death as we swing around a curve? Just the flange of a wheel. If that flange fractures it means death. A brake frame hanging; a bolt works loose; the brake frame drops off. You can not, by the exercise of the most diligent care, guard against such things happening. The rails are held to the ties by spikes. You round a curve and there before you the spikes may have been taken off the rails. That means death and destruction. How many of us stop to think of the danger we are in as to that sort of business?

Now, the constant presence of that sort of thing and the practical safety apparently attending railroad travel tends, in my judgment, to blunt the sensibilities of the men in the cab—the engineer and the fireman. Time after time cases are presented to the Interstate Commerce Commission where a man going along with a good block system—everything is noted all right—and at the next station he runs by that signal, although it is in full view. As I recollect, a terrible accident happened on the Pennsylvania Railroad not long ago, on a road where they have a block system as perfect as can be devised. The employee was as careful a man as there was, but he omitted to look at the block signal that was blocking against him. He could not explain it. It was on a run to New York from somewhere, through Philadelphia, which on a passenger train is less than three hours. The man got on a doze and so it went.

Deplorable as they are, can these things be regulated better than by the companies themselves? As a matter of practice, does the imposition of a penalty on a railroad company help the thing in any way, directly or indirectly? It does not impress the railroad company with a sense of its duty to any greater degree, and nothing can impress it to any greater degree than it is impressed by the practical operations of its road.

Mr. MANN. Do you not think the engineer on duty for three hours only is a little more likely to watch out for signals and observe them than a man who has been on duty for eighteen hours?

Mr. PAYSON. Certainly I do, and I think, judging from our experience, that sixteen hours is a longer limit than you or I would want to work.

Mr. MANN. I think the limit ought to be fixed at twelve hours.

Mr. PAYSON. Then you do not agree with the companies or the men themselves?

Mr. MANN. But I agree with the public who ride on the roads, I think.

Mr. TOWNSEND. You think the companies can handle these things better, and that would apply to every safety device, would it not?

Mr. PAYSON. No; but on that score of safety devices that have been adopted and carried into effect, they have not been adopted and put into effect because of the legislation which has been had; the legislation has only expedited it; that is all.

Before anything of that kind was attempted anybody that had anything to do with railroad enterprises will remember the great danger that existed with the old-fashioned drawbar, where the man had to go in between and fasten it. That was succeeded by the Potter drawbar. That improvement was first put on the Chicago and Alton road when I was a youth. It was not adopted because of legislation requiring it, but because it was an improvement on the existing conditions. And in all the contests that have been had in late years, with reference to the adoption of safety appliances, it is a mistake to say that the railroad companies have not been alive to the necessities and proprieties of the adoption of safety appliances, but what they have resisted—and I have done it time after time for the companies I represent before the Interstate Commerce Commission—has been the speed with which the adoption has been required. They have required the railroads to equip with certain appliances more speedily than they could possibly do it, and so there has been opposition as to the speed with which that has been required.

Mr. TOWNSEND. Do I understand you to say that there has been no opposition on the part of the railroad companies to the adoption of safety devices?

Mr. PAYSON. I do not say no opposition, but I do not think that there has been general opposition to it.

Mr. FULLER. I can not indorse all your statements. I think the result of the present condition of safety appliances is a result of contest; the railroads have contested every inch of ground; they want it to be let alone with regard to that, just the same as they do with regard to this matter of ours and the safety devices that have been required have come about as the result of contest.

Mr. PAYSON. That is not my recollection.

Mr. FULLER. I think hearings before the committees of the House and Senate will bear out that statement of mine. I think the members of this committee who had such legislation before them in the Fifty-seventh Congress will bear me out in that statement.

Mr. PAYSON. I will proceed if there are no other questions; and I hope, Mr. Chairman and gentlemen of the committee, that in what I am saying here I may not be regarded as minimizing the dangers that exist under the present conditions or the desirability of entirely abrogating them if it could be done. Don't misunderstand me as to that. I am not saying in favor of the people I represent, nor anybody with whom I have had any confidence with reference to this, that that is the position of any of us as to that.

Repeating what I said a moment ago—and I desire to emphasize that, because I am impressed with its truthfulness—that as to these

regulations as between the railway company and the employees as to the length of hours, the maximum length of hours of service, that fault is not found with these rules by the men themselves. Only yesterday I had a long conference with Colonel Andrews, first vice-president of the Southern Railroad, and Mr. Spencer, the general manager, upon that very subject. They have no legal representative here that could come before the committee to-day with reference to the matter. A little pamphlet of rules, which they promised to send to my house, gives explicitly what I have stated to you; first, the hours fixed, 16, with the direction even on the part of the company to the employee that at the end of his 16 hours to take his rest, a prohibition against going on duty until the interval of rest has been used by the man, and all that sort of thing; and they were emphatic in their statements to me that so far as they were advised there was no disposition on the part of the men to find any fault with the details of these regulations; that while the hours were pretty long as to some runs, the men themselves preferred that the runs be arranged that way in many instances.

For instance, from here to another point—I don't remember the other terminal—but the regular schedule, I think, is fourteen hours, and sometimes it takes sixteen or seventeen if the train is late, but the idea was that at the other end there is a good town, with hotels and so on, and a Y. M. C. A. building there too, by the way, and the men wanted it that way. Then, as to some passenger runs, Colonel Andrews called my attention to two or three runs where they were short and that the train men themselves preferred to double the trip in order that they might spend their night and the succeeding day at home rather than have a short run and be away from home at the end of it. It commended itself to my judgment as a probable, truthful statement, and I give it to you as coming in that way.

Mr. RYAN. Right there, do you not consider that the interests and the rights of the traveling public come in in this connection?

Mr. PAYSON. That is, if there was such an amount of danger growing out of that sort of thing that it rendered this kind of legislation proper and appropriate. That leads me to the next phase of this. I asked Mr. Spencer and Colonel Andrews to run back over the last three years and tell me if there was a single instance on the Southern road where there had been an accident resulting in loss of life or damage to property where it might have fairly been attributable to overtime work, and they both told me not one within their knowledge. Whether that is a truthful statement or not I can not say, but I believe it is.

Mr. ESCH. Has this been called to your attention, that a man is judged by his willingness to work, and especially in cases of congested traffic; that men who refuse to go on work after having served a detail would be discriminated against and ultimately dropped?

Mr. PAYSON. No; my attention has not been called to such cases. They may exist, but I have never heard of them.

Mr. ESCH. So that a man is penalized because he insists on his regular time of rest.

Mr. PAYSON. If such cases exist I would be glad to be advised. I would like to know the man and the locality where such a thing exists. My friend Mr. Fuller made a statement here of a freight train having a scheduled time of twenty-four hours, and the twenty-four hours

was exacted from the men as a rule, and sometimes they had to overwork that. He declined to give the name of the road. I think he ought to give the name. If such a case exists I agree with him that it ought to be remedied.

Mr. RICHARDSON. You stated you made diligent inquiries and you had not found any instances where complaint had been made that a man had been overtaxed, overworked, and an accident resulting. Well, your idea would be, if that is true, that a law passed by Congress would have no effect at all, it would not accomplish anything, and probably you would do by that just as they did in the case of the law for the transportation of cattle requiring them to be watered and fed at least every twenty-eight hours—they disregarded it, paid no attention to the law. That was admitted to be done in reference to the limit of twenty-eight hours for cattle.

Mr. PAYSON. I don't think such legislation would be any additional incentive to a railroad company to make additional regulations with reference to the management of the railroad than are in force to-day, because certainly a penalty of a hundred dollars visited on a corporation, looking at it simply from that side, would not amount to very much in dollars and cents; but the railroad people themselves, keeping in mind what public opinion is, and the dealings between the railroad company and its men, do the best that can be done under the circumstances, as they are dealing with the situation, and I do not think a penal clause would add to it as to the railroad companies. What its effect may be as to the man, I will come to a few moments later.

Mr. MANN. It would have some effect on a damage suit, I suppose.

Mr. PAYSON. I don't think so; I think it would depend on what the proof would be and the facts averred by the plaintiff. It would not be because the law was so-and-so, but because the fact was so-and-so.

Mr. MANN. But if the railroad company violated the law, that would be something to take into consideration.

Mr. PAYSON. The fact would have to be proved precisely the same in the civil suit that it would be if there was a criminal prosecution—that is, I do not think the record in the criminal prosecution would be evidence in a civil suit; the proof would have to be made precisely the same. That is my judgment about it.

Mr. RICHARDSON. It would be very difficult, however, to get an employee of a company to go and make complaint.

Mr. PAYSON. I don't know that it would in these days, when such strong attempts are made on the part of the labor people to secure what they want.

Mr. RICHARDSON. Take a man who goes and makes a complaint about the railroad company; that man is liable to lose his place. That would probably deter him from complaining.

Mr. GAINES, of West Virginia. I notice in the statistics of the railroads, from the Interstate Commerce Commission in their report, page 121——

Mr. PAYSON. Of what year?

Mr. GAINES. Of 1903. The number of employees to each one killed was 364, and that is the smallest number—that is, the largest proportion of killed since 1893. The number of employees for each one injured is 22, the smallest for any year—that is, the proportion of

injuries is the largest. In the case of passengers, the number of passengers to one killed was 1,957,441. With the exception of 1902, that is the smallest since 1895, including 1895; that is to say, the proportion of killed is larger. The proportion of passengers injured was one for 84,000, which is the smallest number of passengers to one injured ever reported. It seemed to me that in view of the fact that the trains are getting larger, hauling more people, that there should be fewer persons killed.

Mr. PAYSON. One would think so.

Mr. GAINES. But it seems that they are increasing both as to passengers and employees.

Mr. PAYSON. It is quite likely so, although one would think that the increase of passenger traffic and the adoption of safety appliances and all that sort of thing would result in human life being safer now than ever.

Mr. GAINES. That would seem to be very alarming, and certainly very deplorable.

Mr. PAYSON. But I do not think that bears on this question at all, because there is nothing in these statistics which shows the proportion of these casualties resulting from the evils sought to be reached by this bill.

Mr. GAINES. I understand that, but an argument may be based on that as to this particular bill.

Mr. PAYSON. Of course on the general subject it would look as though it ought not to be as it is.

Mr. GAINES. It is not safe to leave it as it has heretofore been left, entirely to private management.

Mr. PAYSON. With that statement before us, what possible legislation can suggest itself on the general subject of railroad regulation that does not enter into the general management of railroads that would prevent that sort of thing?

Mr. RICHARDSON. Did you tell me whether the hours of labor are lengthening or not?

Mr. PAYSON. I do not know as to that, but I understand they have not changed recently. However, I do not know. Mr. Fuller would probably be able to answer that question.

Mr. FULLER. I could not say as to that positively.

Mr. PAYSON. My attention was called to this first, I should think, four or five years ago, and our people have the same regulations as to maximum hours now that we had then. I have been in the legal department of the Southern Pacific Railroad fifteen years, ever since I left Congress, and I have been with the Union Pacific in the legal department since the Harriman interests became identified with the road, about the time of Mr. Huntington's death, about five years ago, and then the same rules were in force as they are to-day.

Mr. TOWNSEND. If the hours had been lengthened that might account for this increase in accidents.

Mr. PAYSON. I hardly think so, because I think there would be special notice of it in making up the statistics.

Mr. FULLER. You can say this: That the tendency has been to increase the length of runs, but, as I said to the committee the other day, I thought these agreements among the companies and the men had done more than the State laws, because the State laws had not been enforced.

Mr. MANN. I would suggest the reason of this increase is the fact that under the new law they report it, and they did not report before.

Mr. GAINES. That may be an explanation, and I was really after the explanation, because I looked up these figures a week or two ago in connection with another matter, and I expected to find the opposite from what I did find.

Mr. PAYSON. I am not able to shed any light on that; it strikes me that it ought to be as you suggest.

Mr. GAINES. It may have been that they were not heretofore reported.

Mr. PAYSON. That may be. That is all I care to say in a general way. Now, as to the bill itself, if it is to be considered, it seems to me some amendments ought to be considered.

Mr. ADAMSON. Mr. Fuller has just stated what we have heard here a hundred times, that State laws might meet the situation, but State laws are not enforced.

I would like you to tell us, first, whether that is true, whether State laws are not enforced as well as Federal laws, and, if they are not, why not?

Mr. PAYSON. I can not give you a bit of information on that.

Mr. ADAMSON. I do not believe that it is true that the State laws are not enforced.

Mr. PAYSON. What I have heard in the room is the first time I have heard it stated. I would not like to deny it, because I have not looked into it; but wondered how that could be so.

Mr. RICHARDSON. Is not that attributable to this fact, that most all the great trunk railroads are interstate railroads, and the State can do nothing with them except on intrastate traffic, and that nearly all the traffic is interstate traffic?

Mr. ADAMSON. I don't think that line of demarkation was involved in the statement at all. Mr. Fuller's statement was that State laws are not enforced.

Mr. PAYSON. What the fact is I don't know.

Mr. RICHARDSON. It is my understanding that there are very few railroads that begin in a State and end in the same State.

Mr. PAYSON. Very few.

Mr. RICHARDSON. And that 85 per cent of the traffic is interstate.

Mr. ADAMSON. Then I suppose if a man murders another on a train carrying interstate commerce that he could not be tried by the State courts. I suppose that is what that ridiculous argument would lead to.

Mr. PAYSON. I think, Mr. Chairman, that one fundamental error in this bill is that the penalty does not run against the employee. The penalty runs against the employer, the carrier, and him alone. I think it ought to go without saying that if a voluntary overworking is made a crime the man who commits the crime at least is one that ought to be punished. I think that goes without saying. It has been rather conspicious in this legislation that any proposed penalty running against the employee has been guarded against by those who favor this kind of legislation, and therefore I think that, taking section 2 of the bill, in line 13, page 2, after the word "act," these words should be inserted, "or any such employee"—that is to say, that from and after the 1st day of July, 1906, it shall be unlawful for any common carrier, its officers or agents, subject to this

act, to require or permit any employee subject to this act or any such employee to be or remain on duty for a longer period than sixteen consecutive hours. And the same amendment ought to come in, as I think, on line 13, page 3, so that that will read:

That any such common carrier, or any officer or agent thereof, knowingly requiring or permitting any employee to go, be, or remain on duty in violation of the second section thereof, in violation of a lawful order of the Commission made under section 3 hereof, or any such employee who shall go on duty in violation of the provisions of this act, shall be liable to a penalty, etc.

I have put in the word "knowingly" there. I will leave this amended copy with the stenographer.

I do not think if I would elaborate this I could make myself any better understood either as to what ought to go in or as to the propriety of its going in.

Mr. ADAMSON. You think if an exhausted man through his cupidity agrees to make a dangerous run he ought to be taken up and punished.

Mr. PAYSON. That presupposes that the employee is ignorant, tired, and stupid, but he is acting unconsciously in what he does.

Mr. ADAMSON. He does it for gain, and he endangers the public.

Mr. PAYSON. Then if it is a crime for him to do it he ought to be punished.

Mr. RICHARDSON. Is it not a crime for the company to do it?

Mr. PAYSON. I am not saying that he ought to be punished, or that anybody ought to be punished, but I say if the carrier is subject to penalty that the employee ought to be also.

Mr. TOWNSEND. It strikes me that is right; and would not that also help to enforce this law?

Mr. PAYSON. I am coming to that.

The only argument that has been made by gentlemen in favor of it is that if there were a penalty on the company now it would be less liable to allow it to be done, because the penalty would act as a deterrent. If the same penalty is to be vested on the employee, he would be less liable to seek the opportunity of doing it.

Mr. RICHARDSON. In other words, if a saloon keeper is prohibited from selling liquor to a minor the saloon keeper and the boy also ought to be punished for violation of the law.

Mr. PAYSON. I do not say that; that raises the question as to the responsibility of a minor, and that sort of thing. There are a good many who believe in that, but I do not say that I do.

Mr. RYAN. Suppose the railroad boss would require the man to go out, and he refuses to go out, he would be discharged then?

Mr. PAYSON. I have never heard of an instance like that, and I don't believe in the whole 200,000 or 300,000 miles of interstate railroads in this country there could be an instance of that kind found in the last year. It is asserted as if that is a common occurrence, but I have never heard of such a thing, and I don't believe it exists.

Mr. RYAN. If that were so the employees would be "up against it."

Mr. PAYSON. He would be "up against it" under that state of facts; yes. Say this is placed on the statute books. Every railroad manager knows what the law is, every superintendent, every assistant superintendent, yard master, and section boss knows what the law is with reference to it, and if he undertakes to ask a man even to work more than the hours he is supposed to work he is subject to the penalty named in this bill, and he knows it. Now, he is not

likely to do it, because it is only in the most extreme case you can imagine such a thing would come about.

Mr. RYAN. I know of railroad yard masters requiring men to violate regulations laid down by the railroad company. For instance, one of the rules is that they shall not step in between moving cars, and I have known cases where they have been required to violate that rule, and if they did not violate the regulations they would have been discharged. That same thing might apply in this case.

Mr. PAYSON. Do you regard that as a parity of situation?

Mr. RYAN. I mention that in this connection.

Mr. PAYSON. Do you think yourself it is worth very much? In the hurry of making up trains it is sometimes necessary to step in between them——

Mr. RYAN. Yes; and I know hundreds of men who have only one arm as a result of it.

Mr. PAYSON. As a result of yard accidents?

Mr. RYAN. Yes.

Mr. PAYSON. Yes; undoubtedly. Another thing. The penalty ought not to run against the railroad company, its agents, or employees unless the acts done are done knowingly by the agent. That is to say, before the penalty is visited upon a train master and he permits a man to go out, he ought to know that that man has worked more than sixteen hours.

Mr. ESCH. Do they not keep a record?

Mr. PAYSON. In theory; yes.

Mr. BARTLETT. They keep a bulletin board, do they not, which shows the hours that every employee has worked?

Mr. PAYSON. Yes; in that sort of a case they knowingly would come within the law, but in cases that have happened, that are not infrequent, the company is deceived, does not know how long the employees have worked. I would refer you to bulletin No. 15.

Mr. MANN. The bill says "permit." Of course without putting in the word "knowingly" there, the railroad officials might be held responsible for some man who worked that they did not even know.

Mr. PAYSON. Yes; and this is a class of cases where, Mr. Mann, I take it, lawyers would agree that in a prosecution for the penalty it would not devolve upon the people to show that the agent of the company did know what was done; it would come in the same class of cases like selling liquor to a minor, or whether his agent does it.

Mr. ADAMSON. He may have forbidden it?

Mr. PAYSON. Yes, precisely; and therefore it seems to me the word "knowingly" ought to be inserted, to show that this thing sometimes happens where the officers do not know what occurs. Here is an accident to which special atention is called by the Interstate Commerce Commission. It is bulletin 15, page 9.

(Mr. Payson read from the bulletin at the page referred to.)

Mr. ADAMSON. The roundhouse foreman must have known of the overworked hours.

Mr. PAYSON. It says not. The recitation in the report is that the actual facts were concealed from the superior officers.

Mr. RICHARDSON. Do you not keep a record of the distance run?

Mr. PAYSON. They should, and wherever that record is kept and made, and so on, then of course that is knowledge; but the law would

be defective unless it contained a provision that it should be done knowingly.

Mr. RICHARDSON. Do you not think that the presumption of law ought to be that the railroad ought to know it?

Mr. PAYSON. I don't know as to that.

Mr. ADAMSON. How can it know anything except through its agents?

Mr. PAYSON. It can not.

Mr. RICHARDSON. I think you would emasculate the whole law if you put the word "knowingly" there.

Mr. PAYSON. Why?

Mr. RICHARDSON. The railroad has charge of the records, can examine them to tell about the employee; and the necessity of proving that the company did examine and did know about the records would destroy the law, in my opinion.

Mr. PAYSON. The employee has no interest in it; it is between the Government and the railroad, and in a prosecution under this it seems to me that the scientia ought to be averred before the railroad should be responsible for the penalty.

Mr. TOWNSEND. The thing that bothers me is how a man could go on as an engineer or a fireman without the man who put him there knew what he had been doing.

Mr. MANN. As a matter of fact, it is not infrequent for one man to be ordered on as a fireman and another man to take his place under the same name.

Mr. PAYSON. I don't know as to that. It might turn out that for some reason a railway company did not know and could not know the facts, and in such case my point is that they ought not to be criminally punished.

Mr. ADAMSON. But they must know them; it is their duty to know them, and they can not properly run their business without knowing those things.

Mr. GAINES. Did not you yourself give a case of an engineer going out and taking another man's place, being almost continuously on duty——

Mr. PAYSON. That was a case of a telegraph operator.

Mr. GAINES. Yes.

Mr. PAYSON. That was in Colorado.

Mr. GAINES. And in that case would you punish the railroad company?

Mr. PAYSON. There is a case, I know, the other day. Here was the day man that performed his duty, and the night man wanted to go off. The story in the newspaper was that the day man said, "I will do your work to-night," and he did it. He dropped off into a doze for some reason—I don't know whether it was on account of extra hours; I don't think it was—and a terrible accident resulted. Now, why should the railroad company be punished for that?

Mr. ADAMSON. I think it would show a fraud on the part of those people deceiving the railroad company.

Mr. ESCH. Yet the train dispatcher at Pueblo, if that was the place, knew or could know who the telegraph operator was at that station?

Mr. PAYSON. Yes; but the train dispatcher there has other things to think of besides whether A was on duty during the day at a given place. He has a right to suppose that the man going on duty, as he

generally did, was the proper man, unless there is something mysterious about the handling of a key that I don't know anything about.

Mr. ESCH. Do not the operators have a letter to identify them?

Mr. PAYSON. I don't know as to practical management. It is enough, it seems to me, Mr. Esch, to say this—and it is not an extreme case—that where one fraudulently, willfully, goes off from duty he ought to perform and another one undertakes to do it, and that makes a violation of the law, that there ought not to be a criminal penalty inflicted on the railroad company for something that, by the exercise of any prudence, it could not avoid, it could not help. Look over every man, whether he was on duty or was not, the public is not helped by that at all; nobody is protected by it except the railroad company, and they ought to be protected as against an act of that kind. It is not a question of money coming from the railroads to citizens by reason of this, but purely a relationship between the Government and the railroad, and the railroad company ought not to be inflicted with a penalty for something which it could not know and did not know and could not have prevented if it did know it, probably. And, therefore, in the places which I have indicated I think the word "knowingly" should be inserted, and that the penalty should be visited on the employee as well as the company, if the bill is to be reported.

Mr. MANN. Of course the purpose of this bill is to prevent habitually sending out men who have been serving a long time. Suppose that we put in the word "knowingly" and then put in a penalty that amounts to something?

Mr. PAYSON. That would be for your wisdom.

Mr. MANN. A hundred-dollar penalty, of course, is nothing.

Mr. PAYSON. I suppose underlying all this, that once it is grafted into a law there would be less violations. I assume that would be the notion on the part of those who are interested in the bill, because certainly it can not be on the principle of lex talionis with reference to this sort of legislation. That is all I care to say, Mr. Chairman.

Mr. FULLER. Since this Colorado accident has come up, I think this happened over thirty days ago, and the detailed reports of it ought to be in the hands of the Interstate Commerce Commission, and I would like this committee to formally request the Interstate Commerce Commission for all the information it has upon that accident in order that we may have it before us. That can be done upon request of this committee.

Mr. NEALE (of the Pennsylvania Railroad). Is it the purpose of this committee to accord further hearings upon this bill?

Mr. ESCH. There are one or two other gentlemen who would like to be heard.

The CHAIRMAN. The committee will now go into executive session.

(Thereupon, at 11.50, the committee went into executive session, at the conclusion of which it adjourned.)

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Friday, May 4, 1906.

The committee met at 10.30 o'clock a. m., Hon. William P. Hepburn in the chair.

The CHAIRMAN. The subject of consideration is that of regulating the hours of labor of railway employees. It was understood, I think, at the adjournment of the last session that the balance of the time would be divided equally. There is an hour and ten minutes this morning, of which we will probably want ten minutes for an executive session, so that there will be an hour to be divided.

STATEMENT OF H. T. NEWCOMB, ESQ., REPRESENTING THE DELAWARE AND HUDSON COMPANY.

Mr. NEWCOMB. Mr. Chairman, Mr. Fuller very wisely informed the committee that this was a very delicate and difficult subject; and I think he has illustrated his own doubt and hesitation in approaching it by furnishing us, every morning when we have come here, with a new measure proposing to deal with it. It is because it is a very difficult subject for the Delaware and Hudson Company, which I represent, one that we have difficulty in dealing with ourselves, that we feel it incumbent upon us to make some suggestions here and some opposition to the enactment of any legislation which would tie our hands.

Mr. TOWNSEND. What is your position? What official position do you hold?

Mr. NEWCOMB. I represent the Delaware and Hudson Company for the purposes of this hearing, and occasionaly in other matters in Washington.

It is because we feel that legislation of this sort would tie our hands in our efforts to perform the duties imposed upon us by the public; it is because we want to be permitted to perform those duties as they ought to be performed that we feel obliged to oppose this measure.

The demands made by the public upon the railway systems of the United States have increased very greatly during the past few years. Mr. Moseley gave you figures showing the vast increase in the amount of traffic carried, both of passengers and freight. It has required, in not more than ten years, the introduction into the railway service of half a million of new employees, and I submit to you that legislation which would require, as Mr. Fuller suggests, a vast further addition to those employees might require us to put men into positions of responsibility rather more rapidly, with rather less training, than ought to be the case. It seems to me that the committee, on its own account, would feel the necessity of consulting with men who are familiar with the difficulties of operating these great railway systems, with the practical questions that have to be met, and which cause these occasional employments that are longer than anybody wishes they were.

I may suggest how great those difficulties are by calling your attention to the fact that the Post-Office Department, in the conduct of the Railway Mail Service, is occasionally obliged to employ

men for longer hours than is permitted by this bill, and in fact there are two regular runs in the Railway Mail Service in which men are employed continuously for twenty-four hours.

Mr. ESCH. Then they have one or two days off, do they not?

Mr. NEWCOMB. They do; and the same is the case in regard to the railways.

The CHAIRMAN. Where are those runs?

Mr. NEWCOMB. I think I have a memorandum of those runs in my pocket. There is one from Ogden to San Francisco and one from El Paso to Los Angeles, both of them twenty-four hour runs. There are many cases where, in case of any extraordinary delay for any reasons, men find it necessary to make long runs.

Mr. MANN. Mr. Newcomb, in those runs do you know whether they have opportunities to take naps?

Mr. NEWCOMB. I think it is quite possible that they do.

Mr. MANN. I understand that they are regularly permitted to sleep.

Mr. NEWCOMB. I do not know about that, but I think that it is quite possible that there is some rest.

Mr. TOWNSEND. Does the safety of other employees and of the public depend upon those men at all?

Mr. NEWCOMB. I should not say that it does. The men are connected with the same sort of service, however, and it is because of the conditions of that service, the conditions of this great transportation business, that it is necessary that they should occasionally work longer hours than we desire. I do not say that it is necessary in the railway service for anybody to work as long hours as those are, but it does seem as though conditions which compel that on the part of this great Government itself ought very carefully to be investigated before hard-and-fast rules are laid down which are not susceptible of exceptions in cases of great necessity.

It is true that the measures that are before us allow exceptions in certain cases, but those are so narrowly restricted that they do not provide for many of the exigencies that often arise. It is not very long since I lost so much time on a passenger train between the city of St. Louis and the city of Columbia, Mo., in an ordinary run of six or seven hours, that the train crew under this bill would have been compelled to leave the train, and it was not because of an accident happening, as the exception here provides, after the train started, but because of a cloudburst that occurred the day before. Immense loss and difficulty and delay would have been caused to a large number of passengers who were traveling in the State of Missouri on that day if this train had not been run through by the crew that started out with it. It taxed the resources of those railroads to the utmost extent to handle the people that were waiting to travel. Occurrences of that kind are very frequent, and the railways must be allowed, if they are to do their business properly for the public, to meet them in the best way that they can.

Then I want to call your attention to the fact that men prefer to make what are called "turn runs"—that is, to run to a terminal and to run back—without a very long interval between. Ten hours, which is provided in this bill, is a much longer period between turn runs than is necessary for recuperation, and in any run certainly

under sixteen hours and verging upon sixteen hours men can be prepared and will be glad to be prepared to make the return very much earlier. They are like any of us; between days' work that are rather arduous and rather exacting upon us physically and mentally we do not demand eight hours of rest, and we do not want eight hours of rest if there is work to be done.

Mr. BARTLETT. You mean eight hours of sleep, not rest, do you not?

Mr. NEWCOMB. I mean eight hours of sleep or rest or whatever it may be called. I am glad to go to bed at 12 o'clock and get up at 6 in order to do my work when it is necessary, and under ordinary conditions I can do it fairly well.

Mr. BARTLETT. But you have not, as the engineer has, a constant strain upon all his faculties. While you may sometimes, in certain cases, have the lives of individuals in your hands, in case of a criminal case, for example, you have not the lives of hundreds of people at a time in your keeping.

Mr. NEWCOMB. There is no question that rest is necessary; but I submit to you that with all of those responsibilities depending upon a man, ten hours is not absolutely necessary or desirable in all cases.

Mr. RYAN. But ten hours off duty is desirable.

Mr. NEWCOMB. They ought to have ten hours off duty, and much more than ten hours off duty, in most cases; but that it should be required in every case is to lay an unjust and improper burden upon the railway service of this country.

Mr. MANN. Mr. Newcomb, do you look upon this matter from the standpoint that a man is able to go to bed at 12 o'clock every night and get up and go to work every morning at 6 and retain good health?

Mr. NEWCOMB. No, sir; nobody is able to do that.

Mr. MANN. I understood you to say that you did that regularly.

Mr. NEWCOMB. Not at all. I think that is one of the things that is confusing this whole question. It is assumed that men have to work sixteen hours out of every twenty-four, or twelve hours out of every twenty-four; but there is no such state of facts in the railway service. Men make long runs in order that they may have long periods of rest between them, and in all ordinary cases they do have long periods of rest and sufficient periods. I do not think anybody is contending that in the course of a month or a week or a year these gentlemen work excessive hours. That certainly is not the case.

Mr. WANGER. Is it not the exceptional case, Mr. Newcomb, where the conditions arise which call for something to be done? Now, here is a case that came to my notice: A freight train was in the habit of going from a country terminal into the city of Philadelphia and after a few hours making the return trip. Then the crew had abundant rest. Ordinarily they had a reasonable amount of rest in Philadelphia; but when that train was delayed in getting into Philadelphia, the time came when it was necessary for it to immediately return; and 25 miles from Philadelphia it was sidetracked to await the passage of an express train. The engineer had been at work on that engine for twenty-two or twenty-three hours. Unconsciously he fell asleep. He suddenly awoke and signaled that he was going ahead. The conductor, who evidently had also been asleep, although he would not confess the fact, asked the engineer if he was sure that the express had passed. He replied: "Oh, yes; the express has passed."

The train ran out on the main track, and along came the express at 60 miles an hour, and there was a collision and death.

Now, that engineer no doubt regarded himself as entirely fit to make that return journey without delay, because he testified that he did not believe he had been asleep. He could not realize that he had been asleep. Now, ought it not to be forbidden to make a renewed journey under those conditions whether a man wants to or whether he does not want to, whether a company wants him to or whether it does not want him to? Ought it not to be forbidden?

Mr. NEWCOMB. Of course you have seized upon a very serious and hard illustration. We are all familiar with the fact that in the courts hard cases make bad law; but they ought not to make bad law in legislatures. The railways are struggling against those occasional difficulties with all their might. They are doing everything they can, and I do not believe that they will be materially assisted in meeting them by any such statute as this.

It has been said here by Mr. Fuller that there are 14 States which have laws covering this subject now; that his great organizations have contracts with many railways in which these maximum hours are prescribed and minimum hours of rest, and yet that they are not enforced. Now, there must be some good reason for that. I think, generally speaking, when we find that the law is not enforced, and a law of this character, where there are many people interested and anxious that it should be enforced, it is because there is some inherent difficulty in the rule that we have attempted to prescribe. It is because the business that we are dealing with will not admit of being conducted on the terms that the law has attempted to lay down; and it certainly is not the wish of anyone that Congress should make another law not to be enforced.

Mr. BARTLETT. But do you not think that the plea of necessity is as bad a ground for violating the law as that hard cases make bad law?

Mr. NEWCOMB. Nobody ought to violate the law from any assumed necessity, but when we see that by common consent, as Mr. Fuller has told us (he knows a great deal more about it than I do), over and over again, wherever these laws exist, or wherever contracts exist to this effect, they are violated; it is almost fruitless for us to inquire about the motives that cause those violations. The fact is the thing we have to deal with. The fact is that the law is not enforced and the contracts are not enforced, and that everybody consents to their violation, and therefore there must be back of it some good reason. I am sure that these gentlemen who enter into these contracts would not violate——

Mr. RYAN. Are you acquainted with the everyday method of making up train crews at the different terminals of the great railways, and do you know just what occasion would necessitate the ordering of a train crew to double over a road?

Mr. NEWCOMB. Only so far as it is a fact that in most of the cases that exist on the Delaware and Hudson, where there are turn runs, it is because the men want to go home to rest rather than spend their money and their time—spend their money for accommodations for rest away from home, and spend their time away from home.

Mr. RYAN. I would like to ask you this question in that connection: Are not the round trips that the crews make from home out and return?

Mr. NEWCOMB. Yes.

Mr. RYAN. Do they work more than sixteen hours going the distance and then have to lie over there?

Mr. NEWCOMB. These turn runs are runs from home to a terminal, and from the terminal back home again.

Mr. RYAN. That is a regular run?

Mr. NEWCOMB. And in that whole time there may be a rather long day, or possibly what may seem to be an excessive day; but there is an interval of rest at the terminal and there is a long period of rest on the return to home.

Mr. ESCH. Your company has no contracts with its men?

Mr. NEWCOMB. We have no contracts with the brotherhoods. We have arrangements with our own employees.

Mr. ADAMSON. Does not the fact of where a man has his family located enter frequently into the fact as to the length of hours he is willing to run?

Mr. NEWCOMB. Why, he wants to run home if he can; if he is a good man, a decent man.

Mr. RICHARDSON. He will frequently overtax himself to do that, will he not?

Mr. NEWCOMB. I think he will do what he can; and the longer period of rest at home makes up for the fact that he works a few extra hours in order to get there.

Mr. RYAN. Take the case that was illustrated by Mr. Wanger. There the run was from some suburb of Philadelphia to Philadelphia and return, or the reverse order. Now, that was a round trip; and after the man had made that round trip he was ordered to double the road again.

Mr. WANGER. Oh, no, no; he had only made the trip to Philadelphia.

Mr. NEWCOMB (to Mr. Ryan). I did not understand it that way.

Mr. WANGER. But he was so late in getting there that he was deprived of the usual rest before returning to his home terminal.

Mr. NEWCOMB. I think Mr. Fuller will tell you——

Mr. RICHARDSON. How long did you say he had been on duty, Mr. Wanger?

Mr. WANGER. He had been on duty twenty-two or twenty-three hours.

Mr. NEWCOMB. Of course you will appreciate that if that happens in Pennsylvania. It is a very excellent matter for the legislature of Pennsylvania to deal with. The Congress of the United States has not any power over that particular train.

Mr. WANGER. Of course our legislation possibly would not have affected it. I do not know whether it would have affected that train or not.

Mr. ADAMSON. If that is a local train that runs on a track over which interstate commerce trains are running I should think it would affect it.

Mr. NEWCOMB. Well, I think that is a pretty sweeping extension of the power to regulate commerce.

Mr. ADAMSON. Not at all.

Mr. WANGER. I think probably there has been some interstate commerce on that train, although I do not know.

Mr. GAINES. I suppose Mr. Wanger put that forward simply as an illustration.

Mr. WANGER. That was all.

Mr. ADAMSON. A local engineer on the same train, sent out by the same manager, going to sleep, might destroy a train engaged in interstate commerce.

Mr. NEWCOMB. That, of course, raises a very interesting and, it seems to me, a very important consideration here. The power of the Congress is certainly limited as to dealing with this question, and the power of the States is not limited as to dealing with it. The State can prescribe these police regulations covering all trains and all traffic and all employees, whether engaged in interstate commerce or otherwise; at least, it can do it until Congress ousts it from that power by itself acting.

Mr. RICHARDSON. You do not think it can do it and use the police power as a pretext for interfering with interstate commerce?

Mr. NEWCOMB. The States can not use the police power as a pretext for interfering with interstate commerce; but this has certainly been held over and over again to be within the police power of the States until Congress, by stepping in and legislating, annuls every State law on the subject and says that they shall legislate no further.

Mr. RICHARDSON. There is no question that Congress can regulate that without touching the rights of the States—the powers of the States.

(After an informal discussion among members of the committee:)

Mr. BARTLETT. Mr. Newcomb, I want to say, from an investigation I have made, that there is a very considerable doubt in my own mind, from the decisions of the Supreme Court, about the proposition which you state with reference to where Congress has not intervened or where Congress does intervene. The last case upon the subject, involving almost that identical question, was almost an even fall between the judges of the Supreme Court, as you will remember, if you have investigated the two last cases.

Mr. NEWCOMB. That is true. I have looked into this question with some care. It seems to me——

Mr. BARTLETT. You know that a part of the judges take the position that where Congress has the power to legislate, and does not legislate, it is an indication that nobody ought to interfere.

Mr. NEWCOMB. There are, I think, if you will pardon me, three classes of commerce pretty clearly laid down in the decisions of the courts. There is, first, the class that is purely State commerce, and absolutely subject to the jurisdiction of the State legislatures.

Mr. ADAMSON. That ought to go on a separate track.

Mr. NEWCOMB. There is, second, that which is strictly interstate commerce, and absolutely subject to the power of Congress; and there is, third, the details of commerce where the power of the State and the power of Congress is concurrent; but the power of Congress being supreme when it acts in accordance with its powers, it ousts the State from any power over those matters as soon as it chooses to act.

Mr. BARTLETT. The decisions are very conflicting upon that very identical proposition.

Mr. NEWCOMB. They are conflicting, I think, as to the precise boundary line between those two powers. I think there is no conflict that there is a concurrent as well as an exclusive power of Congress.

Mr. RICHARDSON. The fact is that Congress can not pass any law at all which will take from the State the power which it has to regulate police matters, nor can any act be passed that will take from Congress or the Federal Government its right. The line of demarcation is not distinct at all.

Mr. ADAMSON. There is not any use in theorizing about this. It is absolutely clear that the State can make it a crime for a man to do anything of that sort in its borders and punish him; but it is also equally clear that the Constitution declares that Congress shall regulate commerce, and if there is a railroad running trains in interstate commerce Congress has a right to control it.

Mr. NEWCOMB. I think that after Congress has acted—and there is a recent decision on this point; I am not good at remembering references—there is a recent decision in which a statute of Texas was declared unconstitutional after the passage of the interstate commerce law because the subject had been dealt with by the Congress of the United States, although prior to that time precisely a similar statute of the State of Iowa before the passage of the interstate commerce law had been held to be lawful.

Mr. ADAMSON. Was that a case where the State of Texas had made it a crime for a man to do something of that sort?

Mr. NEWCOMB. No; it was in relation to the publication of tariffs, I believe. I am not very familiar with the case, although I looked it up the other day.

Mr. RYAN. To get back to the bills that are before us, Mr. Newcomb, are you or any of the corporations you represent in favor of any legislation at all along the lines indicated by any of these bills?

Mr. NEWCOMB. I think we believe—and we could not be conducting the business we do if we did not—that we are doing the best we can under the conditions that confront us; that we are making every possible struggle to eliminate every difficulty of this sort. If legislation is to be adopted on the subject, I think we would believe that it ought to be adopted where it can be complete and can cover the subject thoroughly.

Mr. BARTLETT. Now, one other question, and I will not ask any more. You speak in reference to the men employed desiring shorter periods of rest than that provided for, seeking to come back to their work and to make the run in order to get back home, or for whatever reason they may assign. Now, it is also true, is it not—I do not know how many instances there are, but it is also true that in very busy seasons or times the railroad employees are called on by the railroad officials to go out when they do not like to go, but they cannot refuse to do so because it means so much to them to comply or not to comply? For instance, take a very busy season down in the part of the State in which I live, where they ship fast freights loaded with watermelons and fruits, and that sort of thing. They may have a larger amount of shipments than they have engineers or train men for, and those cars require rapid motion, quick transportation; and men who have been on duty a long time are sent for by the officials to come and go out upon special trains, and they might like to decline in order not to go, but they dare not decline.

Mr. NEWCOMB. Of course the railway business imposes a good many hardships upon everybody connected with it, and it is the most extreme struggle to get great results against the forces of nature that we have anywhere in our industrial organization; and it can not be done without subjecting a great many persons in all ranks of those employed in it, from the general officers down, to a great many extreme hardships. They have to labor often harder than they want to and longer than they want to.

Mr. RYAN. Even if they do endanger the lives of others?

Mr. NEWCOMB. I do not believe that they do; no, sir. I do not believe that endangering the life of anybody is necessary at all.

Mr. BARTLETT. Now, what do you think would follow if an engineer who thought he had been on duty long enough and required more sleep or rest was called on to go out on a train, and was to send word to an official of the road that he was sleepy and had been on duty for a long time and had not had a sufficient number of hours of rest, and that answer was made and he did not comply with the order?

Mr. NEWCOMB. If he was a good man I do not think anything would happen to him. If he was sleepy because it was his own fault, because he had not taken the rest that he had an opportunity to take——

Mr. BARTLETT. I think they would send him a vote of discharge.

Mr. NEWCOMB. If he had not rested when the proper time for rest came, when he had the proper time for rest, I think he would be discharged, and he ought to be.

Mr. BARTLETT. I think he would not only be discharged by that railroad, but would not be employed by any other.

Mr. MANN. I suppose Mr. Bartlett thinks that the railroad is deliberately endeavoring to get a smash up.

Mr. BARTLETT. No; I do not think anything of the kind. I think that at times——

Mr. NEWCOMB. Railroads have been accused of a good many things, but they are performing a pretty large part of the business of this country. They employ a pretty large portion of the population, and I think, like the rest of Americans, railway officials do just about as well as they can in the conditions they have to deal with.

Mr. MANN. Do you know, Mr. Newcomb, whether in any place the railroads habitually employ men more than sixteen hours on a run, and then give them a lay off of a long period of time?

Mr. NEWCOMB. I do not know enough about the general conduct of the railway business to give you an instance. I do not believe that there are many cases of that sort. If there are, it seems to me that those questions ought to be before this committee thoroughly; that this committee ought to know.

The CHAIRMAN. Well, what do you suppose is the reason, after a notice has been given to the railway companies that this hearing would be had, that no one having that information is here? Whose fault is it?

Mr. NEWCOMB. I had understood that there was to be an operating man here to-day, and I have been very much disappointed that he was not here.

The CHAIRMAN. We have had an abundance of lawyers, each one of them claiming that he did not know [laughter]; but we have not had these gentlemen who were supposed to know.

Mr. ADAMSON. Well, they all express a good opinion of the railroads.

Mr. NEWCOMB. If the committee will give me an opportunity, I shall be very glad to produce an operating man who can go into the details and who has a thorough knowledge of the subject.

Mr. ADAMSON. Well, you have had that opportunity.

The CHAIRMAN. I can say, speaking for one of the committee, that you have probably exhausted your opportunity.

Mr. TOWNSEND. A representative of the Pennsylvania road requested that very thing at the last meeting and said he would have a man here to-day, did he not?

Mr. NEWCOMB. I am very sorry that he is not here. I had hoped he would be.

Mr. TOWNSEND. And the man from the Southern Railroad, too, Mr. Payson said would be here.

Mr. NEWCOMB. I am very sorry that I do not know enough about the details to answer the question.

Mr. MANN. Speaking of the details of this substitute bill, may I ask you a question of construction? This bill provides that a railway employee can not be employed more than sixteen hours under any circumstances except where a casualty has occurred after the employee has started on his trip. Suppose there is a wreck out on the Union Pacific Railroad, a long distance from a station somewhere, and you send a train of men out there to look after the wreck. They have been employed for sixteen hours and are in the middle of taking care of the wreck; will they have to stop?

Mr. NEWCOMB. Apparently they would.

Mr. MANN. And lay off for ten hours before they can operate any further, under this bill?

Mr. NEWCOMB. I do not see any latitude whatever under this measure.

Mr. MANN. Can you suggest any language in connection with this which would obviate that difficulty, which, of course, nobody wishes to impose?

Mr. NEWCOMB. The only way is to say, "except in case of some extraordinary emergency," requiring a departure from this general rule. It is true here that the requirement of absolutely ten hours' rest between the hours of labor is just as ironclad as it can be, and it is impossible to depart from it, and it applies no matter how short the run may have been. Now, we have runs 94 miles long that are made in a very short time indeed, and ten hours' rest would be required at the end of those runs before the men could go back to their homes. They can not make the round trip always in the face of any delays at all within the maximum; but without regard to that, the ten hours' minimum of rest applies no matter how long or how short the run has been.

I wanted to call attention merely to one other feature of this measure that, it seems to me, makes it absolutely beyond the power of Congress to enact. It applies by its terms to all the employees of certain classes of railways. I am speaking now of the bill 18671, but the objection is applicable in perhaps a different degree to the proposed bill that we have before us this morning, which applies to all employees engaged in any traffic, any business affecting in any way interstate commerce.

Now, it may be that we shall find out—I believe it is true that we shall find out—that Congress can not go into the State of Pennsylvania or Michigan or North Carolina and say what hours shall be worked by a telegrapher who never leaves the boundaries of that State in the performance of his duties.

Mr. RYAN. Whether he operates interstate-commerce trains or not?

Mr. NEWCOMB. No matter what he has done; I think it quite possible that we shall find out that Congress has not power to do that. I think, beyond that, it is very certain that we will find out that if Congress can do anything with that telegrapher it can only do it at the time that he is engaged in operating a train that is engaged in interstate commerce. It may be that there is no train on his section of the road that is in interstate-commerce traffic, so that we would find a telegrapher to-day subject to the power of Congress and to-morrow not subject to that power, or subject at this hour and not at that hour.

The Johnson case in the Supreme Court went as far as it seems to us the court can ever go in applying the power of Congress to State transportation and the facilities for transportation; and yet it left outside of those limits the telegrapher located, situated, and doing business as I have suggested.

If Congress attempts to pass a law dealing with the whole subject-matter, and has power only to deal with a part of that subject-matter, the courts will not hold a part of that law valid and a part invalid, because they can not assume that Congress, being aware that it only had power to deal with a portion of the subject-matter, would have made a partial piece of class legislation. That doctrine is plainly laid down in the trade-mark cases, and if I may have the time I would like to read this page; if not, I will put it in the record.

The CHAIRMAN. Just put it in the record.

Mr. NEWCOMB. I thank you.

(The matter relating to the trade-mark cases referred to by Mr. Newcomb is as follows:)

The property in trade-marks and the right to their exclusive use resting on the laws of the States, in the same manner that other property does, and depending, like the great body of the rights of person and of property, for their security and protection on those laws, the power of Congress to legislate on the subject, to establish the conditions on which these rights shall depend, the period of their duration, and the legal remedies for their protection, if such power exists at all, must be found in some clause of the Constitution of the United States, the instrument which is the source of all the powers that Congress can lawfully exercise.

* * * * * * *

The other clause of the Constitution supposed to supply the requisite authority in Congress is the third of the same section, which, read in connection with the granting clause, is as follows: "The Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

The argument is that the use of a trade-mark—that which alone gives it any value—is to identify a particular class or quality of goods as the manufacture, produce, or property of the person who puts them in the general market for sale; that the sale of the article so distinguished is commerce; that the trade-mark is, therefore, a useful and valuable aid or instrument of commerce, and its regulation, by virtue of the above provision of the Constitution, belongs to Congress, and that the act in question is a lawful exercise of this power.

It is not every species of property which is the subject of commerce, or which is used or even essential in commerce, which is brought by this clause of the Constitution within the control of Congress. The barrels and casks, the bottles

and boxes in which alone certain articles of commerce are kept for safety and by which their contents are transferred from the seller to the buyer do not thereby become subjects of Congressional legislation more than other property. (Nathan *v.* Louisiana, 8 How., 73.)

* * * * * * *

When, therefore, Congress undertakes to enact a law which can only be valid as a regulation of commerce, it is reasonable to expect to find on the face of the statute or from its essential nature that it is a regulation of commerce with foreign nations, among the several States, or with the Indian tribes. If it is not so limited, it is in excess of the power of Congress. If its main purpose be to establish a regulation applicable to all trade, to commerce at all points, especially if it is apparent that it is designed to govern the commerce wholly between citizens of the same State, it is obviously the exercise of a power not confided to Congress.

* * * If we should, in the case before us, undertake to make by judicial construction a law which Congress did not make, it is quite probable we should do what, if the matter were now before that body, it would be unwilling to do—namely, make a trade-mark law which is only partial in its operation, and which would complicate the rights which parties would hold, in some instances under the act of Congress and in others under State law.

(United States *v.* Steffens, 100 U. S., 82. Trade-mark cases).

STATEMENT OF W. P. BORLAND, ESQ., OF WASHINGTON, D. C.

Mr. BORLAND. My name is W. P. Borland; I am employed by the Interstate Commerce Commission as secretary of the safety appliance examining board.

Mr. ESCH. What railroad experience have you had, if any?

Mr. BORLAND. I was employed for over twenty years in the train service of railroads as fireman, engineer, brakeman, and switchman.

I desire to-day to say a few words on the proposition advanced by Judge Payson here the other day. He laid great stress upon the fact that the agreements between these employees and the railway companies were sufficient to settle this whole question, not taking into consideration the fact that the public is interested fully as much as the employees and the railway companies. If it was a question that concerned merely the employees and the companies, it would probably be correct; but it is a question in which the public is much more deeply interested than they are. I have here the rest rules of a number of railroads—in fact, all the railroads of the United States, Canada, and Mexico that have agreements with the brotherhoods; and I want to call your attention to the fact that every one of these rules leaves it to the discretion of the men themselves.

Now, here are the rules pertaining to Judge Payson's road, the Union Pacific:

After continuous service of sixteen hours, trainmen will be allowed eight hours for rest before being called to go out, provided they so desire.

Now, the Southern Pacific, the Atlantic system:

Freight crews, after making two division trips without rest, will be entitled to eight hours' rest if they require it.

Mr. RYAN. What time is required to make two division trips?

Mr. BORLAND. That is something I can not say. It might be sixteen hours, or it might take twenty-four hours, or it might take forty-eight hours; but they are not entitled to ask for rest until they have made those two division trips.

Mr. RICHARDSON. On Judge Payson's road, that you have just read about, where the limit is sixteen hours, do you favor the idea of allowing the employees to go farther than that if they want to?

Mr. BORLAND. Indeed, I do not, sir; I am merely showing you that the employees themselves are the ones that decide whether they are fit for further duty or not.

On the Pacific system of the Southern Pacific—

When a trainman has served sixteen consecutive hours on duty, at his request he may have at least eight hours' rest, excepting in cases of emergency, such as wrecks, washouts, etc.

The distinguishing characteristic of all those rules is that the men themselves are the judges. Here on the Chicago, Milwaukee and St. Paul road, when train men have been in continuous service so long as to require rest, they shall not be required to go out until sufficient time has been allowed them to recuperate—the men themselves to be the judges of their own physical condition.

Now, there is the agreement.

Mr. MANN. While you were speaking of the Chicago, Milwaukee and St. Paul road I would like to ask you this question: The Chicago, Milwaukee and St. Paul runs its own sleeping cars. I suppose a porter on a sleeping car goes through and the conductor goes through. Is the time of those men to be limited or are they men connected with the operation and movement of these trains?

Mr. BORLAND. I can not say as to that. I do not know anything about that, Mr. Mann.

Mr. MANN. Have you any desire to limit the number of hours that a porter on a sleeping car shall work and the number he shall rest?

Mr. BORLAND. I do not desire to speak as to the merits of that question at all, Mr. Mann. I do not desire to speak as to anything except the men that are actually concerned in the operation of these trains, for the protection of the public. I do not think a porter on a sleeping car has anything to do with that question.

Mr. MANN. How about the conductor of a sleeping car?

Mr. BORLAND. I think the conductors, the firemen, the engineers, the brakemen, the telegraph operators, and the train dispatchers, the ones who have the actual operation of the trains in their charge, are the only ones that should be limited by any legislation of this kind.

Mr. MANN. I understand; but that is all that you wish to cover?

Mr. BORLAND. Yes, sir; that is all that I personally care anything about.

Mr. RICHARDSON. A sleeping-car conductor has nothing to do with the operation of the train.

Mr. BORLAND. I only speak of anything that pertains to the safety of the public.

Mr. ESCH. I would suggest that you leave that list with the stenographer and have it printed in the record.

(The list referred to is as follows:)

REST RULES OF VARIOUS RAILROADS.

Union Pacific.—After continuous service of sixteen hours train men will be allowed eight hours for rest before being called to go out, provided they so desire.

Southern Pacific, Atlantic system.—Freight crews after making two division trips without rest will be entitled to eight hours' rest, if they require it and give due notice thereof, except in cases of wrecks and washouts.

Pacific system.—When a train man has served sixteen consecutive hours on duty, at his request he may have at least eight hours' rest, excepting in cases of emergency, such as wrecks, washouts, etc.

Missouri Pacific Railway.—After continuous service of sixteen hours or more train men shall be entitled to and allowed eight hours for rest before being called to go out, except in cases of wrecks, washouts, or similar emergencies.

Chicago, Milwaukee and St. Paul.—When train men have been in continuous service so long as to require rest they shall not be required to go out until sufficient time has been allowed them to recuperate; men to be judges of their own physical condition. Under ordinary circumstances eight hours' rest will be considered sufficient.

Denver and Rio Grande.—Train men will not be required to go out when they claim to need rest or are incapacitated by sickness, but are required to give timely notice to the proper official, in order that their places may be filled. In case of washouts, wrecks, and other emergencies it is not intended that this clause shall be used to avoid extra exertion.

Missouri, Kansas and Texas.—Train men will not be required to go out when they claim they need rest, nor will they be permitted to go out when, in the judgment of the superintendent or train master, they require rest.

Central Vermont.—Train men, after continuous service of sixteen hours, shall be entitled to eight hours' rest before being again called for service, except in cases of wrecks or similar emergencies.

St. Louis and San Francisco.—After continuous service of sixteen hours or more, trainmen shall be entitled to and allowed eight hours' rest before being called to go out, except in cases of wrecks or washouts or similar emergencies, provided telegraphic or written notice is given trainmaster or division superintendent prior to or at the expiration of any run. Following crews will have the right to run around any crew laying over for rest.

International and Great Northern.—After continuous service of sixteen hours or more, trainmen shall be entitled to and allowed eight hours for rest before being called to go out, except in cases of accident or emergency.

Chesapeake and Ohio.—Conductors and trainmen will not be required to double out after making a trip, unless they consider that they are competent to go, or have had at least eight hours' rest.

Florence and Cripple Creek.—Trainmen will not be required to go out when they need rest, or are incapacitated by sickness, but are required to give timely notice to the proper official in order that their places may be filled.

Chicago Great Western.—No train will be laid up for rest between terminals except by permission of train dispatcher, and in such cases the time laid up will not be allowed.

Houston and Texas Central.—Trainmen, after a continued service of sixteen hours or more, upon written or telegraphic notice to dispatcher or division superintendent, will be entitled to eight hours' rest at terminal station before they are again called for service, except in case of wrecks, washouts, or other emergencies.

Texas and Pacific.—After continued service of twenty hours or more, they shall be entitled to eight hours' rest, if they so desire, before they are again called for service, except in cases of washouts, accidents, or other similar emergencies, provided they notify the proper official on or before their arrival at the terminal station.

Louisville, Evansville and St. Louis.—After a continued service of eighteen hours or more, trainmen shall be entitled to and allowed eight hours' rest at terminals, provided they give proper notice of such desire, except in case of wrecks, washouts, or similar emergencies.

St. Louis Southwestern.—Trainmen, after continued service of sixteen hours or more, will not be required to go out of terminal or turn-around stations until they have eight hours' rest, if they so desire, nor will they be permitted to go out when, in the judgment of the superintendent or trainmaster, they need rest, except in cases of washouts, wrecks, or similar emergencies. Trainmen requiring rest will notify the trainmaster or dispatcher on duty, in writing, on or before their arrival.

Kansas City, Pittsburg and Gulf.—Train men after continued service of sixteen hours shall not be required to go out of terminal station until they have had eight hours' rest, if they so desire, nor will they be permitted to go out when, in the judgment of the superintendent or train master, they need rest, except in cases of washouts, wrecks, or similar emergencies. Train men requiring rest will notify the train master or dispatcher on duty in writing on or before their arrival.

Colorado and Southern.—After continuous service of sixteen hours or more, train men will be entitled to and allowed eight hours for rest before being

called to go out, provided they so desire, excepting in cases of washouts, wrecks, and other emergencies.

Delaware, Lackawanna and Western.—Men who are unable from any cause to perform service must send notice in ample time to make other provision and to avoid being called.

Oregon Railroad and Navigation Company.—After continuous service of sixteen hours or more, train men will be entitled to and will be allowed eight hours' rest before being called to go out, provided they so desire, except in cases of wrecks, washouts, or other emergencies.

Grand Trunk Railway.—Train men after continuous service of sixteen hours or more, may have eight hours' rest before they are again called for service, except in case of emergency.

Colorado Midland.—Train men after continuous service shall not be required to go out when they need rest. Of this each man will judge for himself, but must give notice to train master in sufficient time to avoid delays, and will be entitled to eight hours' rest before again called, except in case of wrecks, washouts, and other emergencies.

Pittsburg and Western.—Train men reaching terminal stations after continuous service of sixteen hours or more will be entitled to eight hours' rest, and not be required to go out except in cases of wreck or extreme emergency.

Atchison, Topeka and Santa Fe.—Any train man, after a continuous service of sixteen hours or more, shall, upon written or telegraphic notice to train master or division superintendent, be entitled to eight hours' rest before he is again called for service, except in cases of wrecks, washouts, or snow blockades; and provided also that such notice is given prior to or at the expiration of any run. Following crews will have the right to run around any crew laying over for rest.

Duluth, South Shore and Atlantic.—No fault will be found with any conductor, brakeman, or switchman who refuses to go out on account of needed rest, nine hours being considereed sufficient under ordinary circumstances.

Michigan Central.—Crews that have been on duty sixteen consecutive hours shall be entitled to eight hours' rest before going out again, except in cases of washouts, wrecks, or other similar emergencies. If any crew at any time become tired upon the road or consider themselves unfit to continue their run, the dispatcher, upon their application and statement of above facts, will allow them to put their train upon a side track and remain there until they are rested or other provision has been made for taking care of their train.

Pittsburg and Lake Erie.—After continuous service of sixteen hours or more trainmen will be entitled to and be allowed at least eight hours for rest before being called to go out, provided they so desire and give proper notice thereof to the proper official, except in case of washouts, accident, or other similar emergencies.

Northern Pacific.—Except in emergencies, trainmen who have been in continuous service for sixteen hours or more will not be called or permitted to leave terminals until they have had opportunity for at least eight hours' rest. No trains will be laid up between terminals except by permission of superintendent.

Mobile and Ohio.—Crews will not be required to go out when they need rest, nor shall any crew be permitted to run on the road when their physical ability has been fairly taxed by previous service, before they have the needed rest.

Oregon Short Line.—After a continuous service of sixteen hours trainmen should have eight hours for rest before being called to go out.

Louisville and Nashville.—After a continuous service of sixteen hours or more conductors and trainmen shall be entitled to and allowed eight hours for rest at terminals, if they give proper notice of such desire, except in case of wrecks or similar emergencies.

Chicago and Northwestern.—No fault will be found with a man who refuses to go out on account of needed rest, eight hours being considered sufficient under ordinary circumstances.

Illinois Central.—Trainmen will be allowed eight hours' rest at terminals after sixteen hours' continuous service, unless they go out voluntarily.

Wabash.—Trainmen, after a continuous service of sixteen hours or more, shall take eight hours' rest before they are again called for service, except in cases of wrecks or similar emergencies.

Wisconsin Central.—Eight hours will be considered sufficient time for rest, and the men will be the judge of their own physical condition, except that the railway company reserves the right to refuse permission to men to go out when it is not thought that they are in condition to make the trip for want of rest.

Southern.—Conductors, flagmen, baggagemen, brakemen, and porters may claim eight hours' rest after they have been on duty twelve hours and completed their runs. Conductors, flagmen, baggagemen, brakemen, and porters shall not be required to go out with a train after they have been on the road eighteen hours or more until they have had ten hours' rest.

Norfolk and Western.—A conductor (or a brakeman) will not be required to go on duty who has not had at least ten hours' rest after being last relieved of his train, provided such rest be registered or trainmaster notified on completion of previous run.

Pere Marquette.—When trainmen have been on duty for twelve hours and have arrived at terminal, if they elect, they shall have ten hours' rest, providing they notify the yardmaster or other proper officer to this effect; otherwise they shall be subject to call after eight hours.

Great Northern.—After fourteen hours' continuous service trainmen may, after reaching terminal, call for and will be allowed eight hours' rest before being called out, except in cases of emergency.

The CHAIRMAN. I would like to ask you a question. What do you know about the preference of these men who would be affected by this legislation as to whether or no they desire the legislation?

Mr. BORLAND. I think, Mr. Chairman, that I may say that a majority of those men do not desire legislation of this kind.

The CHAIRMAN. They do not?

Mr. BORLAND. They do not, and I think if they were brought here they would say so. Now, in that connection I want to say that before the Industrial Commission Mr. Frank Sargent, who is now Commissioner-General of Immigration, and was then grand master of the Brotherhood of Locomotive Firemen, testified on this very question. In answer to a question by Mr. Phillips, of the Commission, he said, and, I think, stated the fact:

> The men in railway service do not want an overproduction. They do not want the railroads loaded down with men, in order that they may have it easy the whole year round. They are willing to take it rougher and work a little harder in the busy season, and then when the dull season comes there is plenty of time to rest up and earn fair wages. The railroad employees have an understanding with the employers that there shall be no more men employed than is necessary to move the traffic with dispatch, and during the busy season they take advantage of it and earn big wages, and when the dull season comes of course they earn the average wages.

I think that is the attitude of the great majority of railway employees. And in that connection the Illinois Central Railroad Company has an agreement with the men that so far as consistent with the interests of the company the number of crews will be kept down to correspond with the business, so that crews in irregular freight service may make 3,000 miles per month. The Rock Island Railroad Company has the same rule. The Santa Fe Railroad Company has the same rule, with the exception that their limit is 2,600 miles per month instead of 3,000. Now, those rules are typical of practically all the railroads of this country that have agreements with the brotherhoods.

Mr. ADAMSON. Do you not think that there is a good deal of reason in those rules?

Mr. BORLAND. Why, certainly I do; but they are concerned merely with the interests of the men.

Mr. RYAN. Do you think the men frequently consult the interests of the public?

Mr. BORLAND. I think they do not. These rules are concerned merely with the interests of the men, and do not affect the interests of

the public at all. The interests of the public are not taken into consideration, and through the operation of these agreements the public interest is jeopardized. That is the rule I want to bring out.

Mr. RICHARDSON. And you are complaining for the public?

Mr. BORLAND. And I am complaining for the public.

The CHAIRMAN. How many accidents or casualties do you know of, or how many have the Commission a record of, that are clearly traceable to evils that would be corrected by this proposed legislation?

Mr. BORLAND. I think Secretary Moseley put in a memorandum here the other day, when he was speaking, showing a record of 225 accidents that have been reported to the Commission.

Mr. WANGER. Out of a total of how many?

Mr. BORLAND. I can not say that, Mr. Wanger. I do not know how many the total is.

Mr. RYAN. In what period of time?

Mr. CUSHMAN. Covering what period of time?

Mr. BORLAND. Since the accident law went into effect, the 1st day of July, 1901, there were 225 accidents—thas is, wrecks and collisions in which life and property were destroyed, in which the employees involved had been on duty for periods of from fifteen to forty-eight hours; and many of these accidents—I will not say how many, but many of them—could be clearly traced to the fact that the employees had been on duty an excessive number of hours.

Mr. ADAMSON. You do not say the entire number of 250?

Mr. BORLAND. No; I do not; I do not say that. I say that the entire number showed that the employees had been on duty this excessive number of hours. But I want to call your attention to this fact, that in the reports of the railway companies to the Commission they are not required to report the number of hours the employees are on duty unless the employee has been on duty a period of fifteen hours or over. Now, they frequently do report lesser periods than that, but they are not required to do it; and you must understand that a man does not necessarily have to be on duty fifteen or sixteen hours to become unfit for duty. He can become unfit for duty by a number of trips of not to exceed six or seven hours if he does not have sufficient intervals of rest between times. You might send a man out to make a trip of six or seven hours, and he might lie off one or two hours, and then send him out again to make another trip of six or seven hours, and keep that up continuously until the man was worn out. Now, those cases are never reported to the Commission at all.

Mr. ADAMSON. They are not frequent, are they?

Mr. BORLAND. My experience as a railroad man tells me that they are very frequent.

Mr. ADAMSON. I wanted to ask you if this arrangement or understanding between the men and the railroads that excessive crews are not to be employed, but that they are to economize the arrangements, that a limited number of crews can do the work and get the pay—I want to know whether the operation of that results in a large per cent of accidents or is the accident a matter of exception?

Mr. BORLAND. It results in excessive working of men, and the larger percentage of accidents follows as a natural course.

Mr. ADAMSON. It eventually would wear the men out?

Mr. BORLAND. It eventually wears the men out.

Mr. ADAMSON. But does it really result in a large percentage of accidents?

Mr. BORLAND. Well, that is a matter of deduction. I could not answer that.

Mr. ADAMSON. I thought you had been studying the figures.

Mr. BORLAND. Do you mean to ask whether this can be deduced from the reports?

Mr. ADAMSON. Are there many of these accidents which result from the violation of the arrangement and the working of excessive hours by the men? Many accidents happen, but do they not happen from other causes? Does a large part of them result from the conductor and brakeman and flagman going to sleep or being exhausted?

Mr. BORLAND. Yes; a large proportion of them do.

Mr. ADAMSON. How large?

Mr. BORLAND. I can not say as to the proportion. I have just told you the number that we have reports from.

Mr. ADAMSON. Yes; but you say they do not all result from that?

Mr. BORLAND. I can not say that they do. I say that many of them have resulted from the men going to sleep, but just how many I can not say.

Mr. ADAMSON. Is not that really a rare occurrence—an exceptional occurrence?

Mr. BORLAND. Why, certainly it is; taking the country all over, it is a rare occurrence. But even if it is rare, if it can be protected and obviated by a law, I think it should be done.

Mr. MANN. Do you mean it is a rare occurrence for men to go to sleep on duty?

Mr. BORLAND. Yes; indeed it is.

Mr. MANN. Well, that is not the case in the House of Representatives. [Laughter.]

Mr. ADAMSON. There is some question about what a man's duty is in the House of Representatives.

Mr. BORLAND. Now, I want to call your attention to a statement made by Judge Payson. He introduced these accident bulletins here when he spoke the other day, and he called your particular attention to a case in Accident Bulletin No. 15, where there was a report by the railroad company that the engineer fell asleep on duty and caused the collision, and there were a number of lives and property lost. The report of the railroad company said that the man had voluntarily overworked himself, failing to ask for rest, and that, concealing the true facts from his superior officers, after a run of fourteen hours, preceded by short rest, he laid off for two hours and thirty-five minutes and then entered upon a run of ten hours, which terminated in the collision.

He called your attention to that fact to prove that the men voluntarily overwork themselves. Now, I am not permitted to tell you the name of the road on which this collision occurred; but I will say that that particular road has this rule: That employees shall have eight hours' rest after a continuous service of sixteen hours, except in cases of washouts or other emergencies, and this man had been on duty only fourteen hours. Now, he had no right to ask for rest; and when the railroad company reported that he had voluntarily overworked himself they were simply stating something that did not go according to the agreement they had with the men.

Mr. RICHARDSON. How does your substitute bill give any relief for that condition?

Mr. BORLAND. I do not know anything about the substitute bill. I have not seen it, and I do not know anything about it.

Mr. RICHARDSON. What relief do you propose to give where a man has worked, for instance, eight hours, and rested a little, and goes on again until he is finally exhausted? What relief do you propose by law?

Mr. BORLAND. House bill No. 18671 requires that he shall be relieved from duty after a service of sixteen hours, and that no such employee who has been relieved from duty after service of any period less than sixteen hours shall be required or permitted to go on duty again until he has had eight consecutive hours of rest.

Mr. ESCH. Mr. Borland, have you any data you wish to file with the committee?

Mr. BORLAND. I have already filed it.

STATEMENT OF H. R. FULLER, ESQ., LEGISLATIVE REPRESENTATIVE OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, THE BROTHERHOOD OF LOCOMOTIVE FIREMEN, AND THE BROTHERHOOD OF RAILROAD TRAINMEN.

Mr. FULLER. Mr. Chairman, I want to speak in behalf of the Brotherhoods of Engineers, Firemen, and Trainmen, and I would like to answer all the questions the members of the committee ask me, but I have only a few minutes, and I want to first answer some of the statements made by the other side that I think are essential. I have here a substitute bill, which I wish to offer on behalf of these three organizations.

I understood that the committee the other day formally asked the Interstate Commerce Commission for the report of the Colorado wreck.

Mr. ESCH. I asked for that, and it is not in.

Mr. FULLER. It is not in. I just want to call attention to this fact: A great deal of stress was laid upon the fact that these accident reports came in promptly by Judge Payson. According to the papers that wreck happened along in the middle of March. The law of Congress reads:

> That any common carrier failing to make such report within thirty days after the end of any month shall be deemed guilty of a misdemeanor and, upon conviction thereof by a court of competent jurisdiction, shall be punished by a fine of not more than one hundred dollars for each and every offense and for every day during which it shall fail to make such report after the time herein specified for making the same.

Mr. RYAN. Do you mean that the accident occurred in March?

Mr. FULLER. Yes; and according to that there is due this Government $400 for the four days that that road has failed to make a report.

I have here three decisions of the Supreme Court of the United States upon the constitutionality of the right of a State to pass legislation of this nature, and I would like to submit them as a part of my statement to the committee. There are two decisions—the Utah and Kansas decisions—which uphold this principle. The New York baker case was, however, decided by a divided court, 5 to 4, and in that case they held that the baker law was not a law to protect

health. So, lest we might get that confused as a reversal of the position of the Supreme Court, I will state that since that decision has been rendered it has rendered another one, a per curiam decision, in the case of Cantwell *v.* The State of Missouri, in 199 U. S., 602, in which it uses the Utah decision as a basis for this decision. So the first two decisions stand, according to that.

Now it is proposed to amend this bill so as to make the railroad company liable only when it knowingly violates the law.

Mr. MANN. Where is that in the bill?

Mr. GAINES. It is not in the bill.

Mr. FULLER. Judge Payson proposed that.

There is no good reason for such an amendment, for a road is always in a position to know whether or not an employee has had a sufficient time off duty to enable him to get the rest required. But in the enforcement of the law, either in a civil or penal way, this amendment would make it more difficult, far more difficult, than it would be for the railroad to ascertain whether or not a man had a sufficient time for rest between trips. Of the list submitted by me of the twelve States having laws limiting the hours of service of railroad employees, only two, Arkansas and Ohio, contain such a provision.

Now, in that connection, I want to show how easy it is for a railroad to know, but if a damage suit arises the one who is prosecuting can not get the evidence. I read here from a page taken from the rest book of the Chicago and Northwestern Railroad Company. Here are the headings of the columns: "Date; number and kinds of train; where from; hours on duty; time of arrival; engineer; conductor; fireman; brakeman; etc.; time called." It contains, on the upper margin, these words:

Minimum rest allowance rule.—Ten hours or less on duty, eight hours rest. Twelve hours on duty, ten hours rest. Fourteen or more hours on duty, twelve hours rest.

I have here a copy of a circular issued by the assistant general manager of the Chicago and Northwestern Railroad. It is dated Chicago, Ill., December 14, 1904, and is addressed to "All superintendents." It says:

GENTLEMEN: Referring to circular letter No. 610, issued February 4, 1902, regarding time to be given train and engine crews for rest. The second clause of this circular reads as follows:

"Keep such record of movement of crews before the train dispatcher as will absolutely prevent an engineman or trainman going out on a run without the full time allotted for rest."

That shows it is possible for them to do that.

Upon investigation I find that there has been no uniform method adopted at train and engine terminals for keeping a record of the trips and rest of the employees, nor are the instructions uniformly understood by the foremen and the man to whom is intrusted the matter of calling the crews. Therefore a "rest register book," Form 620, has been prepared and can now be obtained from the storekeeper by requisition. Wish you would please see that a sufficient number of the books is ordered, and that you maintain one of these registers at all times, and require it to be properly filled out by the train and engine crews arriving at a terminal. Then, please see that the rule, which is printed on this blank attached, is carried out by your callers, yard masters, and all others who have the handling of crews, and that your train dispatchers so handle the ordering of the crews as to conform strictly to this rule.

A copy of this also goes to Mr. Quayle, with request that he issue the necessary instructions to the employees of the motive-power department.

I can not impress upon you all too strongly the absolute necessity of close observation of this rule regarding rest, and you will please understand, and have your subordinates understand, that observance of the third clause of the circular letter above mentioned, reading as follows: "Check this matter up personally to see that the rule is being carried out by examining reports periodically as to the rest actually allowed" will be a guaranty that the rule is strictly obeyed.

In installing this register and carrying out these rules we shall depend upon you to so handle it on your division as to inflict the minimum of hardship on the men, and to impress on them that it is more for their benefit than for the company's or anybody else's that this rule is necessary, and the fewer bulletins, orders, and notices that are issued about it the better.

Please acknowledge receipt and understanding, etc.

The CHAIRMAN. Now, will you not explain the method by which these men are called into service?

Mr. FULLER. When they come in they register the time they come in in a book.

The CHAIRMAN. Do they all go to the same place?

Mr. FULLER. Yes, sir.

The CHAIRMAN. When they come?

Mr. FULLER. Yes, sir.

The CHAIRMAN. The enginemen and all of them?

Mr. FULLER. Well, the enginemen go to the roundhouse, but there is a man there that looks over them the same as the train dispatcher does.

The CHAIRMAN. Where would the book be?

Mr. FULLER. It would be in the roundhouse; in the case of train men it would be in the crew dispatcher's office, very likely.

The CHAIRMAN. So there are two books kept, then?

Mr. FULLER. Why, yes; if the engineers register in the roundhouse, yes; but the foreman of the roundhouse, or the man who is in charge of the engineers' book, is the man who sees to the calling of the engineers and firemen, while the other fellow who has charge of the other book sees to the calling of the men who are registered in that book; so there is no conflict there. Now, then, before they call a man, all they have got to do is to look at that book and see how long he has been in, and it is being done now by roads who want to handle this matter right, and it is the only proper way to do it.

The CHAIRMAN. Now, suppose that a man that is called does not respond for some reason; how is his place filled?

Mr. FULLER. They go and call another crew, another man, in his place.

The CHAIRMAN. They call another crew?

Mr. FULLER. Yes, sir.

Mr. GAINES. Mr. Fuller, may I ask you whether they go by crews? For instance, do an engineer and a fireman usually go together?

Mr. FULLER. They usually go together.

Mr. GAINES. And then the same brakeman and conductor usually go out with them, do they?

Mr. FULLER. Yes, sir; not with that engineer and fireman, frequently, however.

Mr. GAINES. Not with that engineer and fireman?

Mr. FULLER. No. Now, it has been proposed, too, that this bill be so amended as to also subject the employee who works excessive hours

to the same fine as the railroad. It was suggested that such a provision would help the enforcement of the law. In my opinion it would have the very opposite effect; and if Congress is not big enough to make the railroads of the country, who are the proper and responsible ones, operate their trains in safety without penalizing the poor, weak employee who is coerced into working long hours, then it would probably be better to have no legislation at all.

Of the twelve States having such laws not one of them subjects the employee who works more than the limit to punishment. Neither does the eight-hour law of Congress; and we are opposed to this new-fangled doctrine proposed here by Judge Payson. I have shown to the committee where the men were entitled to rest under these agreements, and because of a condition of moral coercion upon them they violate them. If you make it a penal offense for a man to work over the number of hours specified the railroad company knows then that it can institute and keep up these long runs, and a man with the temptation of his home within a few miles from him will submit to it and know that he has got to keep his mouth shut, because he is into it the same as they are; and it is not the policy to do that. Such a law would destroy the possibilities of getting evidence to convict.

The CHAIRMAN. But did you not explain to the committee a little while ago that the large majority of these men were opposed to this class of legislation?

Mr. FULLER. I did not say a majority; and I want to answer with all the emphasis at my command, that I think Mr. Borland is entirely mistaken. I say this: I have presented resolutions from two of the organizations which I represent, one of them passed in the last summer and the other one a year ago last summer, in which they demand legislation of this kind. It would be an impossibility, according to the laws of those organizations, for me to be here asking you for legislation of this kind if a majority were not in favor of it. I sat in the convention of the Brotherhood of Railroad Trainmen at Buffalo, N. Y., last May, as a delegate, and upon this question I kept my mouth closed, because I knew that the sentiment of the men should be expressed without anything that I might have to say about the matter. The resolution was brought into the convention and there was not a vote against it. Now, I think that Brother Borland has said that in good faith, but I do not think he is acquainted with the conditions.

The CHAIRMAN. That was the trainmen?

Mr. FULLER. Yes, sir.

The CHAIRMAN. What as to the other organizations?

Mr. FULLER. The engineers have taken action on this, and they have resolutions at their headquarters in Cleveland, in which I think nearly every division of the organzation, if I am informed rightly, asked for it; and if this committee wants them I will send to Cleveland and get those resolutions.

The CHAIRMAN. There is a national organization, is there, of the engineers?

Mr. RYAN. That is the one he refers to.

Mr. FULLER. Yes, sir; that is the one I refer to; and I want to say to you, Mr. Chairman, in order that there may be no misunderstanding (I know it has been said here by some that I did not represent these men)—I want to say to you that I represent the men

that I claim to represent here to-day just as much as any member of Congress represents the constituents in his district; and I say, too, that the legislation that we come to Congress and ask for has received more of the referendum approval of my constituents than the ordinary legislation does which is passed by Congress.

The CHAIRMAN. Now, with reference to the firemen—have they a national association?

Mr. FULLER. Yes, sir.

The CHAIRMAN. Have they acted on this?

Mr. FULLER. I can not say that they have. I say that the grand master of their organization is authorized to speak in this particular. He has told me, as their representative, that he is in favor of this bill that we have presented here this morning.

The CHAIRMAN. How is it with the National Association of Conductors?

Mr. FULLER. They have not, as I understand, passed upon it.

The CHAIRMAN. Well, the train men—that means the brakemen, does it?

Mr. FULLER. It means brakemen, conductors, switchmen, and train baggage masters; that is a mixed organization.

Mr. MANN. Have the switchmen any association?

Mr. FULLER. We have lots of switchmen in the train men; yes, sir.

Mr. MANN. Is there a switchmen's association outside of the train men?

Mr. RYAN. Oh, yes; their headquarters are in Buffalo.

Mr. FULLER. Yes, sir.

Mr. MANN. Have they acted upon it?

Mr. FULLER. I am not representing them; I could not say whether they have or not.

Mr. MANN. You do not know whether they have taken any action, Mr. Fuller?

Mr. FULLER. I do not know; I do not represent them.

The CHAIRMAN. How about the telegraphers?

Mr. FULLER. I am not representing them.

Mr. CUSHMAN. What organization was Mr. Sargent at the head of when he made the remarks that were read by the gentleman who preceded you?

Mr. FULLER. He was at the head of the Brotherhood of Locomotive Firemen; and I will say that while Mr. Sargent might have said that, Mr. Sargent at this time represents no labor organization.

Mr. CUSHMAN. That is true.

Mr. FULLER. I am representing the organization that he represented then, and the man who succeeded Mr. Sargent says that they want this legislation.

Mr. CUSHMAN. Yes. Do you think that he was mistaken at that time or that there has been a change of sentiment among the men?

Mr. FULLER. I do not think—I do not think—and I speak from experience; I have come up against all of these conditions that I have tried to show you here; I have worked under them, and I do not think that there has been a time in my experience in railroading that the majority of the men did not want some limitation put upon the hours of service.

Mr. ESCH. Mr. Fuller, Mr. Sargent testified before the Industrial Commission away back in 1899.

Mr. FULLER. Yes, sir.

Mr. ESCH. Is it not a fact that the conditions as to congestion of traffic, etc., and the ton haul have vastly increased since that time?

Mr. FULLER. There is no doubt about that, and the tendency has been to increase the runs, which naturally requires more time.

It is said here that no legislation is necessary upon this question; that the railroads will look after it properly themselves. This is the argument we have heard so frequently in the past; we have invariably met it in every case in which we have sought remedial legislation. They used it in the safety-appliance legislation. In that case they said we want to be let alone and we can meet this better ourselves than for Congress to attempt to regulate it by legislation, yet Congress thought it proper to act, and had it not acted I believe we would to-day have many thousand cars in the country which were not equipped with safety appliances.

A prominent railway official, in an address delivered not very long ago before the Central Association of Railroad Officials, at St. Louis, said:

> We had to be driven to the general use of the air brake, without which we would not now think of railroading, and it looks very much like we will have to be driven to the greater use of it. The result, I am sure, will prove beneficial in the long run.

It is true, as stated by this gentleman, that they had to be driven to the greater use of the air brakes. They opposed it before this very committee in the Fifty-seventh Congress.

The CHAIRMAN. Your time has expired, Mr. Fuller.

Mr. FULLER. May I have permission to put these papers in the record?

The CHAIRMAN. Yes; just hand them to the stenographer.

The papers referred to are as follows:

CONSTITUTIONALITY OF STATUTE—EIGHT-HOUR LAW—*Holden v. Hardy, sheriff, 18 Supreme Court Reporter, page 383.*—This case came before the United States Supreme Court upon writs of error to review two judgments of the supreme court of the State of Utah denying applications of the plaintiff in error, Holden, for his discharge upon two writs of habeas corpus, and remanding him to the custody of the sheriff of Salt Lake County. The United States Supreme Court rendered its decision February 28, 1898, and affirmed the judgments of the State court.

The facts in the first case were substantially as follows: On June 20, 1896, complaint was made to a justice of the peace of Salt Lake City that the petitioner, Holden, had unlawfully employed "one John Anderson to work and labor as a miner in the underground workings of the Old Jordan mine, in Bingham canyon, in the county aforesaid, for the period of 10 hours each day; and said defendant, on the date aforesaid and continuously since said time, has unlawfully required said John Anderson, under and by virtue of said employment, to work and labor in the underground workings of the mine aforesaid for the period of 10 hours each day, and that said employment was not in case of an emergency, or where life or property was in imminent danger, contrary," etc.

Defendant Holden, having been arrested upon a warrant issued upon said complaint, admitted the facts set forth therein, but said he was not guilty, because he is a native-born citizen of the United States, residing in the State of Utah; that the said John Anderson voluntarily engaged his services for the hours per day alleged, and that the facts charged did not constitute a crime, because the act of the State of Utah which creates and defines the supposed offense is repugnant to the Constitution of the United States in these respects:

"It deprives the defendant and all employers and employees of the right to make contracts in a lawful way, and for lawful purposes.

"It is class legislation, and not equal or uniform in its provisions.

"It deprives the defendant and employers and employees of the equal protection of the laws, abridges the privileges and immunities of the defendant as a citizen of the United States, and deprives him of his property and liberty without due process of law."

The court, having heard the evidence, found the defendant guilty as charged in the complaint, imposed a fine of $50 and costs, and ordered that the defendant be imprisoned in the county jail for a term of 57 days, or until each fine and costs be paid.

Thereupon petitioner sued out a writ of habeas corpus from the supreme court of the State, annexing a copy of the proceedings before the justice of the peace, and praying his discharge. The supreme court denied his application and remanded him to the custody of the sheriff, whereupon he sued out this writ of error, assigning the unconstitutionality of the law.

In the second case the complaint alleged the unlawful employment by Holden of one William Hooley to work and labor in a certain concentrating mill—the same being an institution for the reduction of ores—for the period of 12 hours per day. The proceedings in this case were precisely the same as in the prior case, and it was admitted that there was no distinction in principle between the two cases.

Mr. Justice Brown, after stating the facts, delivered the following opinion of the court:

This case involves the constitutionality of an act of the legislature of Utah, entitled "An act regulating the hours of employment in underground mines and in smelters and ore-reduction works." The following are the material provisions:

"SECTION 1. The period of employment of workingmen in all underground mines or workings shall be 8 hours per day, except in cases of emergency where life or property is in imminent danger.

"SEC. 2. The period of employment of workingmen in smelters and all other institutions for the reduction or refining of ores or metals shall be 8 hours per day, except in cases of emergency where life or property is in imminent danger.

"SEC. 3. Any person, body corporate, agent, manager, or employer who shall violate any of the provisions of sections one and two of this act shall be guilty of a misdemeanor."

The supreme court of Utah was of opinion that, if authority in the legislature were needed for the enactment of the statute in question, it was found in that part of article 16 of the constitution of the State which declared that "the legislature shall pass laws to provide for the health and safety of employees in factories, smelters, and mines." As the article deals exclusively with the rights of labor, it is here reproduced in full, as exhibiting the authority under which the legislature acted, and as throwing light upon its intention in enacting the statute in question (Laws 1896, p. 219):

"SECTION 1. The rights of labor shall have just protection through laws calculated to promote the industrial welfare of the State.

"SEC. 2. The legislature shall provide by law for a board of labor, conciliation, and arbitration, which shall fairly represent the interests of both capital and labor. The board shall perform duties and receive compensation as prescribed by law.

"SEC. 3. The legislature shall prohibit:

"(1) The employment of women, or of children under the age of 14 years, in underground mines.

"(2) The contracting of convict labor.

"(3) The labor of convicts outside prison grounds, except on public works under the direct control of the State.

"(4) The political and commercial control of employees.

"SEC. 4. The exchange of blacklists by railroad companies, or other corporations, associations, or persons is prohibited.

"SEC. 5. The right of action to recover damages for injuries resulting in death shall never be abrogated, and the amount recoverable shall not be subject to any statutory limitation.

"SEC. 6. Eight hours shall constitute a day's work on all works or undertakings carried on or aided by the State, county, or municipal governments; and the legislature shall pass laws to provide for the health and safety of employees in factories, smelters, and mines.

"SEC. 7. The legislature, by appropriate legislation, shall provide for the enforcement of the provisions of this article."

The validity of the stautue in question is, however, challenged upon the ground of an alleged violation of the fourteenth amendment to the Constitution of the United States, in that it abridges the privileges or immunities of citizens of the United States, deprives both the employer and the laborer of his property without due process of law, and denies to them the equal protection of the laws. As the three questions of abridging their immunities, depriving them of their property, and denying them the protection of the laws are so connected that the authorities upon each are, to a greater or less extent, pertinent to the others, they may properly be considered together.

Prior to the adoption of the fourteenth amendment there was a similar provision against deprivation of life, liberty, or property without due process of law incorporated in the fifth amendment; but as the first eight amendments to the Constitution were obligatory only upon Congress, the decisions of this court under this amendment have but a partial application to the fourteenth amendment, which operates only upon the action of the several States. The fourteenth amendment, which was finally adopted July 28, 1868, largely expanded the power of the Federal courts and Congress, and for the first time authorized the former to declare invalid all laws and judicial decisions of the States abridging the rights of citizens or denying them the benefit of due process of law.

This amendment was first called to the attention of this court in 1872, in an attack upon the constitutionality of a law of the State of Louisiana, passed in 1869, vesting in a slaughterhouse company therein named the sole and exclusive privilege of conducting and carrying on a live-stock landing and slaughterhouse business within certain limits specified in the act, and requiring all animals intended for sale and slaughter to be landed at their wharves or landing places. (Slaughterhouse cases, 16 Wall., 36.) While the court in that case recognized the fact that the primary object of this amendment was to secure to the colored race, then recently emancipated, the full enjoyment of their freedom, the further fact that it was not restricted to that purpose was admitted both in the prevailing and dissenting opinions, and the validity of the act was sustained as a proper police regulation for the health and comfort of the people. A majority of the cases which have since arisen have turned, not upon a denial to the colored race of rights therein secured to them, but upon alleged discriminations in matters entirely outside of the political relations of the parties aggrieved.

These cases may be divided, generally, into two classes: First, where a State legislature or a State court is alleged to have unjustly discriminated in favor of or against a particular individual or class of individuals, as distinguished from the rest of the community, or denied them the benefit of due process of law; second, where the legislature has changed its general system of jurisprudence by abolishing what had been previously considered necessary to the proper administration of justice, or the protection of the individual.

Among those of the first class, which, for the sake of brevity, may be termed "unjust discriminations," are those wherein the colored race was alleged to have been denied the right of representation upon juries (Strauder *v.* West Virginia, 100 U. S., 303; Virginia *v.* Rives, Id., 313; Ex parte Virginia, Id., 339; Neal v. Delaware, 103 U. S., 370; Bush *v.* Kentucky, 107 U. S., 110, 1 Sup. Ct., 625; Gibson *v.* Mississippi, 162 U. S., 565, 16 Sup. Ct., 904), as well as those wherein the State was charged with oppressing and unduly discriminating against persons of the Chinese race (Barbier *v.* Connolly, 113 U. S., 27, 5 Sup. Ct., 357; Soon Hing *v.* Crowley, 113 U. S., 703, 5 Sup. Ct., 730; Yick Wo *v.* Hopkins, 118 U. S., 356, 6 Sup. Ct., 1064; Chy Lung *v.* Freeman, 92 U. S., 275), and those wherein it was sought, under this amendment, to enforce the right of women to suffrage, and to admission to the learned professions (Minor *v.* Happersett, 21 Wall., 162; Bradwell *v.* State, 16 Wall., 130).

To this class is also referable all those cases wherein the State courts were alleged to have denied to particular individuals the benefit of due process of law secured to them by the statutes of the State (In re Converse, 137 U. S., 624, 11 Sup. Ct., 191; Arrowsmith *v.* Harmoning, 118 U. S., 194, 6 Sup. Ct., 1023), as well as that other large class, to be more specifically mentioned hereafter, wherein the State legislature was charged with having transcended its proper police power in assuming to legislate for the health or morals of the community.

Cases arising under the second class, wherein a State has chosen to change its methods of trial to meet a popular demand for simpler and more expeditious forms of administering justice, are much less numerous, though of even greater importance, than the others. A reference to a few of these cases may not be in-

appropriate in this connection. Thus, in Walker *v.* Sauvinet, 92 U. S., 90, which was an action brought by a colored man against the keeper of a coffeehouse in New Orleans for refusing him refreshments, in violation of the constitution of the State securing to the colored race equal rights and privileges in such cases, a statute of the State provided that such cases should be tried by jury if either party demanded it, but if the jury failed to agree the case should be submitted to the judge, who should decide the same. It was held that a trial by jury was not a privilege or immunity of citizenship which the States were forbidden to abridge, but the requirement of due process of law was met if the trial was had according to the settled course of judicial proceedings. "Due process of law," said Chief Justice Waite, "is process due according to the law of the land. This process in the States is regulated by the law of the State." This law was held not to be in conflict with the Constitution of the United States.

Similar rulings with regard to the necessity of a jury or of a judicial trial in special proceedings were made in Kennard *v.* Louisiana, 92 U. S., 480; McMillan *v.* Anderson, 95 U. S., 37; Davidson *v.* New Orleans, 96 U. S., 97; Walston *v.* Nevin, 128 U. S., 578, 9 Sup. Ct., 192; Ex parte Wall, 107 U. S., 265, 2 Sup Ct., 569.

In Hurtado *v.* California, 110 U. S., 516, 4 Sup. Ct., 111, 292, it was held that due process of law did not necessarily require an indictment by a grand jury in a prosecution by a State for murder. The constitution of California authorized prosecutions for felonies by information, after examination and commitment by a magistrate, without an indictment by a grand jury, in the discretion of the legislature. It was held that conviction upon such an information, followed by sentence of death, was not illegal under the fourteenth amendment.

In Hayes *v.* Missouri, 120 U. S., 68, 7 Sup. Ct., 350, it was held that a statute of a State which provided that, in capital cases, in cities having a population of over 100,000 inhabitants, the State shall be allowed 15 peremptory challenges to jurors, while elsewhere in the State it was allowed only 8 peremptory challenges, did not deny to a person tried for murder, in a city containing over 100,000 inhabitants, the equal protection of the laws enjoined by the fourteenth amendment, and that there was no error in refusing to limit the State's peremptory challenges to 8.

In Railway Co. *v.* Mackey, 127 U. S., 205, 8 Sup. Ct., 1161, it was said that a statute in Kansas abolishing the fellow-servant doctrine, as applied to railway accidents, did not deny to railroads the equal protection of the laws and was not in conflict with the fourteenth amendment. The same ruling was made with reference to statutes requiring railways to erect and maintain fences and cattle guards, and make them liable in double the amount of damages claimed, for the want of them.

In Hallinger *v.* Davis, 146 U. S., 314, 13 Sup. Ct., 105, it was held that a State statute conferring upon an accused person the right to waive a trial by jury, and to elect to be tried by the court, and conferring power upon the court to try the accused in such case, was not a violation of the due process clause of the fourteenth amendment.

So, In re Kemmler, 136 U. S., 436, 10 Sup. Ct., 930, it was held that the law providing for capital punishment by electricity was not repugnant to this amendment. And in Duncan *v.* Missouri, 152 U. S., 377, 14 Sup. Ct., 570, it was said that the prescribing of different modes of procedure, and the abolition of courts, and the creation of new ones, leaving untouched all the substantial protection with which the existing law surrounds persons accused of crime, are not considered within the constitutional inhibition. (See, also, Medley, Petitioner, 134 U. S., 160, 10 Sup. Ct., 384; Holden *v.* Minnesota, 137 U. S., 484, 11 Sup. Ct., 143.)

An examination of both these classes of cases under the fourteenth amendment will demonstrate that, in passing upon the validity of State legislation under that amendment, this court has not failed to recognize the fact that the law is, to a certain extent, a progressive science; that in some of the States methods of procedure which, at the time the Constitution was adopted, were deemed essential to the protection and safety of the people, or to the liberty of the citizen, have been found to be no longer necessary; that restrictions which had formerly been laid upon the conduct of individuals, or classes of individuals, had proved detrimental to their interests, while, upon the other hand, certain other classes of persons (particularly those engaged in dangerous or unhealthful employments) have been found to be in need of additional protection. Even before the adoption of the Constitution much had been done toward mitigating the severity of the common law, particularly in the administration of its crimi-

nal branch. The number of capital crimes in this country, at least, had been largely decreased. Trial by ordeal and by battle had never existed here, and had fallen into disuse in England. The earlier practice of the common law, which denied the benefit of witnesses to a person accused of felony, had been abolished by statute, though, so far as it deprived him of the assistance of counsel and compulsory process for the attendance of his witnesses, it had not been changed in England. But, to the credit of her American colonies, let it be said that so oppressive a doctrine had never obtained a foothold there.

The present century has originated legal reforms of no less importance. The whole fabric of special pleading, once thought to be necessary to the elimination of the real issue between the parties, has crumbled to pieces. The ancient tenures of real estate have been largely swept away, and land is now transferred almost as easily and cheaply as personal property. Married women have been emancipated from the control of their husbands and placed upon a practical equality with them with respect to the acquisition, possession, and transmission of property. Imprisonment for debt has been abolished. Exemptions from execution have been largely added to, and in most of the States homesteads are rendered incapable of seizure and sale upon forced process. Witnesses are no longer incompetent by reason of interest, even though they be parties to the litigation. Indictments have been simplified, and an indictment for the most serious of crimes is now the simplest of all. In several of the States grand juries, formerly the only safeguard against a malicious prosecution, have been largely abolished, and in others the rule of unanimity, so far as applied to civil cases, has given way to verdicts rendered by a three-fourths majority. This case does not call for an expression of opinion as to the wisdom of these changes, or their validity under the fourteenth amendment, although the substitution of prosecution by information in lieu of indictment was recognized as valid in Hurtado *v.* California, 110 U. S., 516, 4 Sup. Ct., 111, 292. They are mentioned only for the purpose of calling attention to the probability that other changes of no less importance may be made in the future, and that, while the cardinal principles of justice are immutable, the methods by which justice is administered are subject to constant fluctuation, and that the Constitution of the United States, which is necessarily and to a large extent inflexible, and exceedingly difficult of amendment, should not be so construed as to deprive the States of the power to so amend their laws as to make them conform to the wishes of the citizens, as they may deem best for the public welfare, without bringing them into conflict with the supreme law of the land.

Of course, it is impossible to forecast the character or extent of these changes; but in view of the fact that, from the day Magna Charta was signed to the present moment, amendments to the structure of the law have been made with increasing frequency, it is impossible to suppose that they will not continue, and the law be forced to adapt itself to new conditions of society, and particularly to the new relations between employers and employees, as they arise.

Similar views have been heretofore expressed by this court. Thus, in the case of Missouri *v.* Lewis, 101 U. S., 22, 31, it was said by Mr. Justice Bradley: "We might go still further, and say, with undoubted truth, that there is nothing in the Constitution to prevent any State from adopting any system of laws or judicature it sees fit for all or any part of its territory. If the State of New York, for example, should see fit to adopt the civil law and its method of procedure for New York City and the surrounding counties and the common law and its methods of procedure for the rest of the State, there is nothing in the Constitution of the United States to prevent its doing so. This would not, of itself, within the meaning of the fourteenth amendment, be a denial to any person of the equal protection of the laws. * * * The fourteenth amendment does not profess to secure to all persons in the United States the benefit of the same laws and the same remedies. Great diversities in these respects may exist in two States separated only by an imaginary line. On one side of this line there may be a right of trial by jury, and on the other no such right. Each State prescribes its own modes of judicial proceeding. If diversities of laws and judicial proceedings may exist in the several States without violating the equality clause in the fourteenth amendment, there is no solid reason why there may not be such diversities in different parts of the same State."

The same subject was also elaborately discussed by Mr. Justice Matthews in delivering the opinion of this court in Hurtado *v.* California, 110 U. S.. 516, 530, 4 Sup. Ct.,. 118: "This flexibility and capacity for growth is the peculiar boast and excellence of the common law. * * * The Constitution of the United States was ordained, it is true, by descendants of Englishmen, who inherited

the traditions of English law and history; but it was made for an undefined and expanding future, and for a people gathered and to be gathered from many nations, and of many tongues. And, while we take just pride in the principles and institutions of common law, we are not to forget that, in lands where other systems of jurisprudence prevail, the ideas and processes of civil justice are also not unknown. Due process of law, in spite of the absolutism of continental governments, is not alien to that code which survived the Roman Empire as the foundation of modern civilization in Europe, and which has given us that fundamental maxim of distributive justice—'Suum cuique tribuere.' There is nothing in Magna Charta, rightly construed as a broad charter of public right and law, which ought to exclude the best ideas of all systems and of every age; and, as it was the characteristic principle of the common law to draw its inspiration from every fountain of justice, we are not to assume that the sources of its supply have been exhausted. On the contrary, we should expect that the new and various experiences of our own situation and system will mold and shape it into new and not less useful forms." We have seen no reason to doubt the soundness of these views. In the future growth of the nation, as heretofore, it is not impossible that Congress may see fit to annex territories whose jurisprudence is that of the civil law. One of the considerations moving to such annexation might be the very fact that the territory so annexed should enter the Union with its traditions, laws, and systems of administration unchanged. It would be a narrow construction of the Constitution to require them to abandon these or to substitute for a system which represented the growth of generations of inhabitants a jurisprudence with which they had had no previous acquaintance or sympathy.

We do not wish, however, to be understood as holding that this power is unlimited. While the people of each State may doubtless adopt such systems of laws as best conform to their own traditions and customs, the people of the entire country have laid down in the Constitution of the United States certain fundamental principles, to which each member of the Union is bound to accede as a condition of its admission as a State. Thus the United States are bound to guarantee to each State a republican form of government, and the tenth section of the first article contains certain other specified limitations upon the power of the several States, the object of which was to secure to Congress paramount authority with respect to matters of universal concern. In addition, the fourteenth amendment contains a sweeping provision forbidding the States from abridging the privileges and immunities of citizens of the United States, and denying them the benefit of due process or equal protection of the laws.

This court has never attempted to define with precision the words "due process of law," nor is it necessary to do so in this case. It is sufficient to say that there are certain immutable principles of justice, which inhere in the very idea of free government, which no member of the Union may disregard, as that no man shall be condemned in his person or property without due notice and an opportunity of being heard in his defense. What shall constitute due process of law was perhaps as well stated by Mr. Justice Curtis in Murray's Lessees *v.* Land Co., 18 How., 272, 276, as anywhere. He said: "The Constitution contains no description of those processes which it was intended to allow or forbid. It does not even declare what principles are to be applied to ascertain whether it be due process. It is manifest that it was not left to the legislative power to enact any process which might be devised. The article is a restraint on the legislative as well as on the executive and judicial powers of the Government, and can not be so construed as to leave Congress free to make any process 'due process of law' by its mere will. To what principles, then, are we to resort to ascertain whether this process enacted by Congress is due process? To this the answer must be twofold: We must examine the Constitution itself to see whether this process be in conflict with any of its provisions. If not found to be so, we must look to those settled usages and modes of proceeding existing in the common and statute law of England before the emigration of our ancestors, and which are shown not to have been unsuited to their civil and political condition by having been acted on by them after the settlement of this country.

It was said by Mr. Justice Miller, in delivering the opinion of this court in Davidson *v.* New Orleans, 96 U. S., 97, that the words "law of the land," as used in Magna Charta, implied a conformity with the "ancient and customary laws of the English people," and that it was wiser to ascertain their intent and application by the "gradual process of judicial inclusion and exclusion as the cases presented for decision shall require, with the reasoning on which such decisions may be founded." Recognizing the difficulty in defining with exactness the phrase "due process of law," it is certain that these words imply a con-

formity with natural and inherent principles of justice, and forbid that one man's property or right to property shall be taken for the benefit of another, or for the benefit of the State, without compensation, and that no one shall be condemned in his person or property without an opportunity of being heard in his own defense.

As the possession of property, of which a person can not be deprived, doubtless implies that such property may be acquired, it is safe to say that a State law which undertakes to deprive any class of persons of the general power to acquire property would also be obnoxious to the same provision. Indeed, we may go a step further, and say that as property can only be legally acquired, as between living persons, by contract, a general prohibition against entering into contracts with respect to property, or having as their object the acquisition of property, would be equally invalid.

The latest utterance of this court upon this subject is contained in the case of Allgeyer *v.* Louisiana, 165 U. S., 578, 591, 17 Sup. Ct., 427, in which it was held that an act of Louisiana which prohibited individuals within the State from making contracts of insurance with corporations doing business in New York was a violation of the fourteenth amendment. In delivering the opinion of the court, Mr. Justice Peckham remarked: "In the privilege of pursuing an ordinary calling or trade, and of acquiring, holding, and selling property, must be embraced the right to make all proper contracts in relation thereto; and although it may be conceded that this right to contract in relation to persons or property, or to do business within the jurisdiction of the State, may be regulated and sometimes prohibited when the contracts or business conflict with the policy of the State as contained in its statutes, yet the power does not and can not extend to prohibiting a citizen from making contracts of the nature involved in this case outside of the limits and jurisdiction of the State, and which are also to be performed outside of such jurisdiction."

This right of contract, however, is itself subject to certain limitations which the State may lawfully impose in the exercise of its police powers. While this power is inherent in all governments, it has doubtless been greatly expanded in its application during the past century owing to an enormous increase in the number of occupations which are dangerous or so far detrimental to the health of employees as to demand special precautions for their well-being and protection or the safety of adjacent property. While this court has held (notably in the cases of New Orleans *v.* Davidson, 95 U. S., 465, and Yick Wo *v.* Hopkins, 118 U. S., 356, 6 Sup. Ct., 1064) that the police power can not be put forward as an excuse for oppressive and unjust legislation, it may be lawfully resorted to for the purpose of preserving the public health, safety, or morals, or the abatement of public nuisances, and a large discretion "is necessarily vested in the legislature to determine not only what the interests of the public require, but what measures are necessary for the protection of such interests." (Lawton *v.* Steele, 152 U. S., 133, 136, 14 Sup. Ct., 499.)

The extent and limitations upon this power are admirably stated by Chief Justice Shaw in the following extract from his opinion in Massachusetts *v.* Alger, 7 Cush., 84: "We think it a settled policy, growing out of the nature of well-ordered civil society, that every holder of property, however absolute and unqualified his title, holds it under the implied liability that its use may be so regulated that it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. All property in this Commonwealth, as well in the interior as that bordering on the tide waters, is derived directly or indirectly from the Government, and held subject to those general regulations which are necessary to the common good and general welfare. Rights of property, like all other social and conventional rights, are subject to such reasonable limitation in their enjoyment as will prevent them from being injurious, and to such reasonable restraints and regulations by law as the legislature, under the Government and controlling power vested in them by the Constitution, may think necessary and expedient."

This power, legitimately exercised, can neither be limited by contract nor bartered away by legislation.

While this power is necessarily inherent in every form of government, it was, prior to the adoption of the Constitution, but sparingly used in this country. As we were then almost purely an agricultural people, the occasion for any special protection of a particular class did not exist. Certain profitable employments, such as lotteries and the sale of intoxicating liquors, which were then considered to be legitimate, have since fallen under the ban of public opinion, and are now

either altogether prohibited or made subject to stringent police regulations. The power to do this has been repeatedly affirmed by this court. (Stone *v.* Mississippi, 101 U. S., 814; Douglas *v.* Kentucky, 168 U. S., 488, 18 Sup. Ct., 199; Giozza *v.* Tiernan, 148 U. S., 657, 13 Sup. Ct., 721; Kidd *v.* Pearson 128 U. S., 1, 9 Sup. Ct., 6; Crowley *v.* Christensen, 137 U. S., 86, 11 Sup. Ct., 13.)

While the business of mining coal and manufacturing iron began in Pennsylvania as early as 1716, and in Virginia, North Carolina, and Massachusetts even earlier than this, both mining and manufacturing were carried on in such a limited way and by such primitive methods that no special laws were considered necessary, prior to the adoption of the Constitution, for the protection of the operatives; but, in the vast proportions which these industries have since assumed, it has been found that they can no longer be carried on with due regard to the safety and health of those engaged in them without special protection against the dangers necessarily incident to these employments. In consequence of this, laws have been enacted in most of the States designed to meet these exigencies and to secure the safety of persons peculiarly exposed to these dangers. Within this general category are ordinances providing for fire escapes for hotels, theaters, factories, and other large buildings; a municipal inspection of boilers, and appliances designed to secure passengers upon railways and steamboats against the dangers necessarily incident to these methods of transportation. In States where manufacturing is carried on to a large extent provision is made for the protection of dangerous machinery against accidental contact; for the cleanliness and ventilation of working rooms; for the guarding of well holes, stairways, elevator shafts, and for the employment of sanitary appliances. In others, where mining is the principal industry, special provision is made for the shoring up of dangerous walls; for ventilation shafts, bore holes, escapement shafts, means of signaling the surface; for the supply of fresh air, and the elimination, as far as possible, of dangerous gases; for safe means of hoisting and lowering cages; for a limitation upon the number of persons permitted to enter a cage; that cages shall be covered; and that there shall be fences and gates around the top of shafts, besides other similar precautions. (Sand. & H. Dig. Ark., p. 1149; Rev. St. Cal., secs. 5045–5062; Supp. Mills' Ann. St. Colo., c. 85; Gen. St. Conn., 1888, secs. 2645–2647, 2263–2272; Rev. St. Ill. 1889, p. 980; Thornt. Ind. St. 1897, c. 98, p. 1652; 2 Gen. St. Kan. 1897, pp. 813–824; Ky. St. (Barbour & Carroll), c. 88, p. 951; Supp. Pub. St. Mass. 1889–1895, pp. 582, 746, 1163; How. Ann. St. Mich., sec. 9209b et seq.; 3 Gen. St. N. J., p. 1900 et seq.; 2 Rev. St. (Code & Gen. Laws N. Y.), p. 2069; Supp. Bright. Purd. Dig. Pa., p. 2241 et seq.)

These statutes have been repeatedly enforced by the courts of the several States; their validity assumed; and, so far as we are informed, they have been uniformly held to be constitutional.

In Daniels *v.* Hilgard, 77 Ill., 640, it was held that the legislature had power under the constitution to establish reasonable police regulations for the operating of mines and collieries, and that an act providing for the health and safety of persons employed in coal mines, which required the owner or agent of every coal mine or colliery employing 10 men or more to make, or cause to be made, an accurate map or plan of the workings of such coal mine or colliery was not unconstitutional, and that the question whether certain requirements are a part of a system of police regulations, adopted to aid in the protection of life and health, was properly one of legislative determination, and that a court should not lightly interfere with such determination, unless the legislature had manifestly transcended its province. (See also Coal Co. *v.* Taylor, 81 Ill., 590.)

In Pennsylvania *v.* Bonnell, 8 Phila., 534, a law providing for the ventilation of coal mines, for speaking tubes, and the protection of cages was held to be constitutional and subject to strict enforcement. (Pennsylvania *v.* Conyngham, 66 Pa. St., 99; Durant *v.* Coal Co., 97 Mo., 62.)

But if it be within the power of a legislature to adopt such means for the protection of the lives of its citizens, it is difficult to see why precautions may not also be adopted for the protection of their health and morals. It is as much for the interest of the State that the public health should be preserved as that life should be made secure. With this end in view, quarantine laws have been enacted in most, if not all, of the States; insane asylums, public hospitals, and institutions for the care and education of the blind established, and special measures taken for the exclusion of infected cattle, rags, and decayed fruit. In other States laws have been enacted limiting the hours during which women and children shall be employed in factories; and while their constitutionality, at least as applied to women, has been doubted in some of the States,

they have been generally upheld. Thus, in the case of Com. *v.* Hamilton Mfg. Co., 120 Mass., 383, it was held that a statute prohibiting the employment of all persons under the age of 18, and of all women laboring in any manufacturing establishment more than 60 hours per week, violates no contract of the Commonwealth implied in the granting of a charter to a manufacturing company, nor any right reserved under the constitution to any individual citizen, and may be maintained as a health or police regulation.

Upon the principles above stated we think the act in question may be sustained as a valid exercise of the police power of the State. The enactment does not profess to limit the hours of all workmen, but merely those who are employed in underground mines, or in the smelting, reduction, or refining of ores or metals. These employments, when too long pursued, the legislature has judged to be detrimental to the health of the employees; and, so long as there are reasonable grounds for believing that this is so, its decision upon this subject can not be reviewed by the Federal courts.

While the general experience of mankind may justify us in believing that men may engage in ordinary employments more than 8 hours per day without injury to their health, it does not follow that labor for the same length of time is innocuous when carried on beneath the surface of the earth, where the operative is deprived of fresh air and sunlight, and is frequently subjected to foul atmosphere and a very high temperature, or to the influence of noxious gases generated by the processes of refining or smelting.

We concur in the following observations of the supreme court of Utah in this connection: "The conditions with respect to health of laborers in underground mines doubtless differ from those in which they labor in smelters and other reduction works on the surface. Unquestionably, the atmosphere and other conditions in mines and reduction works differ. Poisonous gases, dust, and impalpable substances arise and float in the air in stamp mills, smelters, and other works in which ores containing metals, combined with arsenic or other poisonous elements or agencies, are treated, reduced, and refined, and there can be no doubt that prolonged effort, day after day, subject to such conditions and agencies, will produce morbid, noxious, and often deadly effects in the human system. Some organisms and systems will resist and endure such conditions and effects longer than others. It may be said that labor in such conditions must be performed. Granting that, the period of labor each day should be of a reasonable length. Twelve hours per day would be less injurious than 14, 10 than 12, and 8 than 10. The legislature has named 8. Such a period was deemed reasonable. * * * The law in question is confined to the protection of that class of people engaged in labor in underground mines, and in smelters and other works wherein ores are reduced and refined. This law applies only to the classes subjected by their employment to the peculiar conditions and effects attending underground mining and work in smelters and other works for the reduction and refining of ores. Therefore it is not necessary to discuss or decide whether the legislature can fix the hours of labor in other employments. Though reasonable doubts may exist as to the power of the legislature to pass a law, or as to whether the law is calculated or adapted to promote the health, safety, or comfort of the people, or to secure good order or promote the general welfare, we must resolve them in favor of the right of that department of government." (46 Pac., 1105.)

The legislature has also recognized the fact, which the experience of legislators in many States has corroborated, that the proprietors of these establishments and their operatives do not stand upon an equality, and that their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employees, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In other words, the proprietors lay down the rules and the laborers are practically constrained to obey them. In such cases self-interest is often an unsafe guide, and the legislature may properly interpose its authority.

It may not be improper to suggest in this connection that although the prosecution in this case was against the employer of labor, who apparently, under the statute, is the only one liable, his defense is not so much that his right to contract has been infringed upon, but that the act works a peculiar hardship to his employees, whose right to labor as long as they please is alleged to be thereby violated. The argument would certainly come with better grace and greater cogency from the latter class. But the fact that both parties are of full age, and competent to contract, does not necessarily deprive the State of the

power to interfere, where the parties do not stand upon an equality, or where the public health demands that one party to the contract shall be protected against himself. The State still retains an interest in his welfare, however reckless he may be. The whole is no greater than the sum of all the parts, and when the individual health, safety, and welfare are sacrificed or neglected, the State must suffer.

We have no disposition to criticise the many authorities which hold that State statutes restricting the hours of labor are unconstitutional. Indeed, we are not called upon to express an opinion upon this subject. It is sufficient to say of them that they have no application to cases where the legislature had adjudged that a limitation is necessary for the preservation of the health of employees, and there are reasonable grounds for believing that such determination is supported by the facts. The question in each case is whether the legislature has adopted the statute in exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination, or the oppression or spoliation of a particular class. The distinction between these two different classes of enactments can not be better stated than by a comparison of the views of this court found in the opinions in Barbier *v.* Connolly, 113 U. S., 27, 5 Sup. Ct., 357, and Soon Hing *v.* Crowley, 113 U. S., 703, 5 Sup. Ct., 730, with those later expressed in Yick Yo *v.* Hopkins, 118 U. S., 356, 6 Sup. Ct., 1064.

We are of opinion that the act in question was a valid exercise of the police power of the State, and the judgments of the supreme court of Utah are therefore affirmed.

Mr. Justice Brewer and Mr. Justice Peckham dissented.

EIGHT-HOUR LAW—MUNICIPAL CORPORATIONS—CONSTITUTIONALITY OF STATUTE—*Atkin v. State, United States Supreme Court, No. 30, October term, 1903.*—This was an appeal by W. W. Atkin from a judgment by the supreme court of Kansas, declaring the application to this case of what is known as the "Eight-hour law" of Kansas, and affirming the judgment of the district court of Wyandotte County, assessing a penalty on Atkin for a violation of said law.

This act was passed in 1891, and its first two sections read as follows:

"SECTION 1. Eight hours shall constitute a day's work for all laborers, workmen, mechanics, or other persons now employed, or who may hereafter be employed by or on behalf of the State of Kansas, or by or on behalf of any county, city, township, or other municipality of said State, except in cases of extraordinary emergency which may arise in time of war or in cases where it may be necessary to work more than eight hours per calendar day for the protection of property or human life: *Provided*, That in all such cases the laborers, workmen, mechanics, or other persons so employed and working to exceed eight hours per calendar day shall be paid on the basis of eight hours constituting a day's work: *Provided further*, That not less than the current rate of per diem wages in the locality where the work is performed shall be paid to laborers, workmen, mechanics, and other persons so employed by or on behalf of the State of Kansas, or any county, city, township, or other municipality of said State; and laborers, workmen, mechanics, and other persons employed by contractors or subcontractors in the execution of any contract or contracts within the State of Kansas, or within any county, city, township, or other municipality thereof shall be deemed to be employed by or on behalf of the State of Kansas or of such county, city, township, or other municipality thereof.

"SEC. 2. All contracts hereafter made by or on behalf of the State of Kansas, or by or on behalf of any county, city, township, or other municipality of said State, with any corporation, person, or persons, for the performance of any work or the furnishing of any material manufactured within the State of Kansas, shall be deemed and considered as made upon the basis of eight hours constituting a day's work; and it shall be unlawful for any such corporation, person, or persons to require or permit any laborer, workman, mechanic, or other person to work more than eight hours per calendar day in doing such work or in furnishing or manufacturing such material, except in the cases and upon the conditions provided in section 1 of this act."

The third section makes any officer of Kansas, or of any county, city, township, or municipality of that State, or any person acting under or for such officer, or any contractor with the State, or any county, city, township, or other municipality thereof, or other person violating any of the provisions of this act, liable for each offense, and subject to be punished by a fine of not less than $50 nor

more than $1,000, or by imprisonment not more than six months, or by both fine and imprisonment, in the discretion of the court.

The constitutionality of this law had been affirmed by the supreme court of Kansas in the case In re Dalton, 59 Pac., 336 (see Bulletin of the Department of Labor, No. 28, p. 610), and this phase of the question was not considered by that court in its discussion of this case. The appeal was based, however, on the claim that the law was unconstitutional in that it deprived the appellant, Atkin, of his liberty and property without due process of law, and denied him the equal protection of the laws.

The following facts appear in an agreed statement: That Atkin had contracted with the municipal corporation of Kansas City, Kans., to do the labor and furnish the materials for paving Quindaro boulevard, a public street of that city; that he employed, among others, one George Reese to perform labor in that connection; that he permitted Reese to labor more than eight hours on each calendar day although there was no emergency or necessity requiring the same; that the agreement with Reese was that he should receive 15 cents per hour and no more, the current rate of wages for such work in that locality being $1.50 for ten hours' labor per day; that Atkin required of Reese that he work ten hours per day in order to be entitled to the current rate of wages of $1.50; that Reese was neither compelled nor requested to work more than eight hours per day, but did so voluntarily and was permitted and allowed to work ten hours in each calendar day in order to earn $1.50 such day; that the labor in which Reese was engaged was neither hazardous nor unhealthful and could be performed for a period of ten hours each working day without injury, and was in all respects the same, whether done for a municipality, or for a private person, or corporation; that Reese had solicited employment, and that neither he nor Atkin intended or expected that the former should receive the same compensation for eight hours' work as was paid customarily for ten hours' work; that the employment was without the knowledge or consent of the city, Reese being the servant of Atkin and not of the city; and that the contract between Atkin and the city did not contain any provision as to the number of hours laborers should work nor as to their compensation.

The constitutionality of the law was affirmed, Chief Justice Fuller and Justices Brewer and Peckham dissenting. From the remarks of Justice Harlan, who delivered the opinion of the court, the following is quoted:

> The case has been stated quite fully, in order that there may be no dispute as to what is involved and what not involved in its determination. * * * Assuming that the statute has application only to labor or work performed by or on behalf of the State, or by or on behalf of a municipal corporation, the defendant [Atkin] contends that it is in conflict with the fourteenth amendment. He insists that the amendment guarantees to him the right to pursue any lawful calling, and to enter into all contracts that are proper, necessary, or essential to the prosecution of such calling; and that the statute of Kansas unreasonably interferes with the exercise of that right, thereby denying to him the equal protection of the laws.
>
> "If a statute," counsel [for defendant] observes, "such as the one under consideration is justifiable, should it not apply to all persons and to all vocations whatsoever? Why should such a law be limited to contractors with the State and its municipalities? Why should the law allow a contractor to agree with a laborer to shovel dirt for ten hours a day in performance of a private contract, and make exactly the same act under similar conditions a misdemeanor when done in the performance of a contract for the construction of a public improvement? Why is the liberty with reference to contracting restricted in the one case and not in the other?
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> These questions—indeed, the entire argument of defendant's counsel—seem to attach too little consequence to the relation existing between a State and its municipal corporations. Such corporations are the creatures, mere political subdivisions, of the State for the purpose of exercising a part of its powers. They may exert only such powers as are expressly granted to them, or such as may be necessarily implied from those granted. What they lawfully do of a public character is done under the sanction of the State. They are, in every essential sense, only auxiliaries of the State for the purposes of local government. They may be created, or, having been created, their powers may be restricted or enlarged, or altogether withdrawn at the will of the legislature; the authority of the legislature, when restricting or withdrawing such powers, being subject only to the fundamental condition that the collective and individual rights of the people of the municipality shall not thereby be destroyed.

[Cases cited.] In the case last cited [Williams *v.* Eggleston, 170 U. S., 304, 310] we said that "a municipal corporation is, so far as its purely municipal relations are concerned, simply an agency of the State for conducting the affairs of government, and as such it is subject to the control of the legislature." * * *

The improvement of the boulevard in question was a work of which the State, if it had deemed it proper to do so, could have taken immediate charge by its own agents; for, it is one of the functions of government to provide public highways for the convenience and comfort of the people. Instead of undertaking that work directly, the State invested one of its governmental agencies with power to care for it. Whether done by the State directly or by one of its instrumentalities, the work was of a public, not private, character.

If, then, the work upon which the defendant employed Reese was of a public character, it necessarily follows that the statute in question, in its application to those undertaking work for or on behalf of a municipal corporation of the State, does not infringe the personal liberty of anyone. * * * Whatever may have been the motives controlling the enactment of the statute in question, we can imagine no possible ground to dispute the power of the State to declare that no one undertaking work *for it or for one of its municipal agencies*, should permit or require an employee on such work to labor in excess or eight hours each day, and to inflict punishment upon those who are embraced by such regulations and yet disregard them. It can not be deemed a part of the liberty of any contractor that *he* be allowed to do public work in any mode he may choose to adopt, without regard to the wishes of the State. On the contrary, it belongs to the State, as the guardian and trustee for its people, and having control of its affairs, to prescribe the conditions upon which it will permit public work to be done on its behalf or on behalf of its municipalites. No court has authority to review its action in that respect. Regulations on this subject suggest only considerations of public policy. And with such considerations the courts have no concern.

If it be contended to be the right of everyone to dispose of his labor upon such terms as he deems best—as undoubtedly it is—and that to make it a criminal offense for a contractor for public work to permit or require his employee to perform labor upon that work in excess of eight hours each day, is in derogation of the liberty both of employees and employer, it is sufficient to answer that no employee is entitled, of absolute right and as a part of his liberty, to perform labor for the State; and no contractor for public work can excuse a violation of his agreement with the State by doing that which the statute under which he proceeds distinctly and lawfully forbids him to do.

So, also, if it be said that a statute like the one before us is mischievous in its tendencies, the answer is that the responsibility therefor rests upon legislators, not upon the courts. No evils arising from such legislation could be more far-reaching than those that might come to our system of government if the judiciary, abandoning the sphere assigned to it by the fundamental law, should enter the domain of legislation, and upon grounds merely of justice or reason or wisdom annul statutes that had received the sanction of the people's representatives. We are reminded by counsel that it is the solemn duty of the courts in cases before them to guard the constitutional rights of the citizens against merely arbitrary power. That is unquestionably true. But it is equally true—indeed, the public interests imperatively demand—that legislative enactments should be recognized and enforced by the courts as embodying the will of the people, unless they are plainly and palpably, beyond all question, in violation of the fundamental law of the Constitution. It can not be affirmed of the statute of Kansas that it is plainly inconsistent with that instrument; indeed, its constitutionality is beyond all question.

Equally without any foundation upon which to rest is the proposition that the Kansas statute denied to the defendant or to his employee the equal protection of the laws. The rule of conduct prescribed by it applies alike to all who contract to do work on behalf either of the State or of its municipal subdivisions, and alike to all employed to perform labor on such work.

Some stress is laid on the fact, stipulated by the parties for the purposes of this case, that the work performed by defendant's employee is not dangerous to life, limb, or health, and that daily labor on it for ten hours would not be injurious to him in any way. In the view we take of this case, such considerations are not controlling. We rest our decision upon the broad ground that the work being of a public character, absolutely under the control of the State and its municipal agents acting by its authority, it is for the State to prescribe the

conditions under which it will permit work of that kind to be done. Its action touching such a matter is final so long as it does not, by its regulations, infringe the personal rights of others; and that has not been done.

Supreme Court of the United States.—No. 292.—October term, 1904.

JOSEPH LOCHNER, PLAINTIFF IN ERROR, *v.* THE PEOPLE OF THE STATE OF NEW YORK.

In error to the county court of Oneida County, State of New York.

[April 17, 1905.]

This is a writ of error to the county court of Oneida County, in the State of New York (to which court the record had been remitted), to review the judgment of the court of appeals of that State, affirming the judgment of the supreme court, which itself affirmed the judgment of the county court, convicting the defendant of a misdemeanor on an indictment under a statute of that State, known, by its short title, as the labor law. The section of the statute under which the indictment was found is section 110, and is reproduced in the margin[a]

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[a] SEC. 110. *Hours of labor in bakeries and confectionery establishments.*—No employee shall be required or permitted to work in a biscuit, bread, or cake bakery or confectionery establishment more than sixty hours in any one week, or more than ten hours in any one day, unless for the purpose of making a shorter work day on the last day of the week; nor more hours in any one week than will make an average of ten hours per day for the number of days during such week in which such employee shall work.

SEC. 111. *Drainage and plumbing of buildings and rooms occupied by bakeries.*—All buildings or rooms occupied as biscuit, bread, pie, or cake bakeries shall be drained and plumbed in a manner conducive to the proper and healthful sanitary condition thereof, and shall be constructed with air shafts, windows, or ventilating pipes sufficient to insure ventilation. The factory inspector may direct the proper drainage, plumbing, and ventilation of such rooms or buildings. No cellar or basement not now used for a bakery shall hereafter be so occupied or used, unless the proprietor shall comply with the sanitary provisions of this article.

SEC. 112. *Requirements as to rooms, furniture, utensils, and manufactured products.*—Every room used for the manufacture of flour or meal food products shall be at least eight feet in height and shall have, if deemed necessary by the factory inspector, an impenetrable floor constructed of cement, or of tiles laid in cement, or an additional flooring of wood properly saturated with linseed oil. The side walls of such rooms shall be plastered or wainscoted. The factory inspector may require the side walls and ceiling to be whitewashed at least once in three months. He may also require the wood work of such walls to be painted. The furniture and utensils shall be so arranged as to be readily cleansed and not prevent the proper cleaning of any part of the room. The manufactured flour or meal food products shall be kept in dry and airy rooms, so arranged that the floors, shelves, and other facilities for storing the same can be properly cleaned. No domestic animals, except cats, shall be allowed to remain in a room used as a biscuit, bread, pie, or cake bakery or any room in such bakery where flour or meal products are stored.

SEC. 113. *Wash rooms and closets; sleeping places.*—Every such bakery shall be provided with a proper wash room and water-closet or water-closets apart from the bake room, or rooms where the manufacture of such food product is conducted, and no water-closet, earth-closet, privy, or ashpit shall be within or connected directly with the bake room of any bakery, hotel, or public restaurant.

No person shall sleep in a room occupied as a bake room. Sleeping places for the persons employed in the bakery shall be separate from the rooms where flour or meal or food products are manufactured or stored. If the sleeping places are on the same floor where such products are manufactured, stored, or sold, the factory inspector may inspect and order them put in a proper sanitary condition.

SEC. 114. *Inspection of bakeries.*—The factory inspector shall cause all bakeries to be inspected. If it be found upon such inspection that the bakeries so

(together with the other sections of the labor law upon the subject of bakeries, being sections 111 to 115, both inclusive).

The indictment averred that the defendant "wrongfully and unlawfully required and permitted an employee working for him in his biscuit, bread and cake bakery and confectionery establishment, at the city of Utica, in this county, to work more than sixty hours in one week," after having been theretofore convicted of a violation of the same act; and therefore, as averred, he committed the crime of misdemeanor, second offence. The plaintiff in error demurred to the indictment on several grounds, one of which was that the facts stated did not constitute a crime. The demurrer was overruled, and the plaintiff in error having refused to plead further, a plea of not guilty was entered by order of the court and the trial commenced, and he was convicted of misdemeanor, second offence, as indicted, and sentenced to pay a fine of $50 and to stand committed until paid, not to exceed fifty days in the Oneida County jail. A certificate of reasonable doubt was granted by the county judge of Oneida County, whereon an appeal was taken to the appellate division of the supreme court, fourth department, where the judgment of conviction was affirmed. (73 Applt. Div., 120.) A further appeal was then taken to the court of appeals, where the judgment of conviction was again affirmed. (177 N. Y., 145.)

Mr. Justice PECKHAM, after making the foregoing statement of the facts, delivered the opinion of the court:

The indictment, it will be seen, charges that the plaintiff in error violated the one hundred and tenth section of article 8, chapter 415, of the Laws of 1897, known as the labor law of the State of New York, in that he wrongfully and unlawfully required and permitted an employee working for him to work more than sixty hours in one week. There is nothing in any of the opinions delivered in this case, either in the supreme court or the court of appeals of the State, which construes the section, in using the word "required," as referring to any physical force being used to obtain the labor of an employee. It is assumed that the word means nothing more than the requirement arising from voluntary contract for such labor in excess of the number of hours specified in the statute. There is no pretence in any of the opinions that the statute was intended to meet a case of involuntary labor in any form. All the opinions assume that there is no real distinction, so far as this question is concerned, between the words "required" and "permitted." The mandate of the statute that "no employee shall be required or permitted to work," is the substantial equivalent of an enactment that "no employee shall contract or agree to work," more than ten hours per day, and as there is no provision for special emergencies the statute is mandatory in all cases. It is not an act merely fixing the number of hours which shall constitute a legal day's work, but an absolute prohibition upon the employer, permitting, under any circumstances, more than ten hours' work to be done in his establishment. The employee may desire to earn the extra money which would arise from his working more than the prescribed time, but this statute forbids the employer from permitting the employee to earn it.

The statute necessarily interferes with the right of contract between the employer and employees, concerning the number of hours in which the latter may labor in the bakery of the employer. The general right to make a contract in relation to his business is part of the liberty of the individual protected by the fourteenth amendment of the Federal Constitution. (*Allgeyer* v. *Louisiana*, 165 U. S., 578.) Under that provision no State can deprive any person of life, liberty, or property without due process of law. The right to purchase or to sell labor is part of the liberty protected by this amendment, unless there are circumstances which exclude the right. There are, however, certain powers, existing in the sovereignty of each State in the Union, somewhat vaguely termed police powers, the exact description and limitation of which have not been

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inspected are constructed and conducted in compliance with the provisions of this chapter, the factory inspector shall issue a certificate to the persons owning or conducting such bakeries.

SEC. 115. *Notice requiring alterations.*—If, in the opinion of the factory inspector, alterations are required in or upon premises occupied and used as bakeries, in order to comply with the provisions of this article, a written notice shall be served by him upon the owner, agent, or lessee of such premises, either personally or by mail, requiring such alterations to be made within sixty days after such service, and such alterations shall be made accordingly.

attempted by the courts. Those powers, broadly stated and without, at present, any attempt at a more specific limitation, relate to the safety, health, morals, and general welfare of the public. Both property and liberty are held on such reasonable conditions as may be imposed by the governing power of the State in the exercise of those powers, and with such conditions the fourteenth amendment was not designed to interfere. (*Mugler* v. *Kansas*, 123 U. S., 623; *In re Kemmler*, 136 id., 436; *Crowley* v. *Christensen*, 137 id., 86; *In re Converse*, 137 id., 624.)

The State, therefore, has power to prevent the individual from making certain kinds of contracts, and in regard to them the Federal Constitution offers no protection. If the contract be one which the State, in the legitimate exercise of its police power, has the right to prohibit, it is not prevented from prohibiting it by the fourteenth amendment. Contracts in violation of a statute, either of the Federal or State Government, or a contract to let one's property for immoral purposes, or to do any other unlawful act, could obtain no protection from the Federal Constitution, as coming under the liberty of person or of free contract. Therefore, when the State, by its legislature, in the assumed exercise of its police powers, has passed an act which seriously limits the right to labor or the right of contract in regard to their means of livelihood between persons who are *sui juris* (both employer and employee), it becomes of great importance to determine which shall prevail—the right of the individual to labor for such time as he may choose, or the right of the State to prevent the individual from laboring or from entering into any contract to labor, beyond a certain time prescribed by the State.

This court has recognized the existence and upheld the exercise of the police powers of the States in many cases which might fairly be considered as border ones, and it has, in the course of its determination of questions regarding the asserted invalidity of such statutes, on the ground of their violation of the rights secured by the Federal Constitution, been guided by rules of a very liberal nature, the application of which has resulted, in numerous instances, in upholding the validity of State statutes thus assailed. Among the later cases where State law has been upheld by this court is that of *Holden* v. *Hardy* (169 U. S., 366). A provision in the act of the legislature of Utah was there under consideration, the act limiting the employment of workmen in all underground mines or workings to eight hours per day, "except in cases of emergency, where life or property is in imminent danger." It also limited the hours of labor in smelting and other institutions for the reduction or refining of ores or metals to eight hours per day, except in like cases of emergency. The act was held to be a valid exercise of the police powers of the State. A review of many of the cases on the subject, decided by this and other courts, is given in the opinion. It is held that the kind of employment, mining, smelting, etc., and the character of the employees in such kinds of labor, were such as to make it reasonable and proper for the State to interfere to prevent the employees from being constrained by the rules laid down by the proprietors in regard to labor. The following citation from the observations of the supreme court of Utah in that case was made by the judge writing the opinion of this court, and approved: "The law in question is confined to the protection of that class of people engaged in labor in underground mines, and in smelters and other works wherein ores are reduced and refined. This law applies only to the classes subjected by their employment to the peculiar conditions and effects attending underground mining and work in smelters and other works for the reduction and refining of ores. Therefore it is not necessary to discuss or decide whether the legislature can fix the hours of labor in other employments."

It will be observed that, even with regard to that class of labor, the Utah statute provided for cases of emergency wherein the provisions of the statute would not apply. The statute now before this court has no emergency clause in it, and, if the statute is valid, there are no circumstances and no emergencies under which the slightest violation of the provisions of the act would be innocent. There is nothing in *Holden* v. *Hardy* which covers the case now before us. Nor does *Atkins* v. *Kansas* (191 U. S., 207) touch the case at bar. The Atkins case was decided upon the right of the State to control its municipal corporations and to prescribe the conditions upon which it will permit work of a public character to be done for a municipality. *Knoxville Co.* v. *Harbison* (183 U. S., 13) is equally far from an authority for this legislation. The employees in that case were held to be at a disadvantage with the employer in matters of wages, they being miners and coal workers, and the act simply

provided for the cashing of coal orders when presented by the miner to the employer.

The latest case decided by this court, involving the police power, is that of *Jacobson* v. *Massachusetts*, decided at this term and reported in 197 U. S., 11. It related to compulsory vaccination, and the law was held valid as a proper exercise of the police powers with reference to the public health. It was stated in the opinion that it was a case "of an adult who, for aught that appears, was himself in perfect health and a fit subject for vaccination, and yet, while remaining in the community, refused to obey the statute and the regulation, adopted in execution of its provisions, for the protection of the public health and the public safety, confessedly endangered by the presence of a dangerous disease." That case is also far from covering the one now before the court.

Petit v. *Minnesota* (177 U. S., 164) was upheld as a proper exercise of the police power relating to the observance of Sunday, and the case held that the legislature had the right to declare that, as matter of law, keeping barber shops open on Sunday was not a work of necessity or charity.

It must, of course, be conceded that there is a limit to the valid exercise of the police power by the State. There is no dispute concerning this general proposition. Otherwise the fourteenth amendment would have no efficacy and the legislatures of the States would have unbounded power, and it would be enough to say that any piece of legislation was enacted to conserve the morals, the health, or the safety of the people. Such legislation would be valid, no matter how absolutely without foundation the claim might be. The claim of the police power would be a mere pretext—become another and delusive name for the supreme sovereignty of the State to be exercised free from constitutional restraint. This is not contended for. In every case that comes before this court, therefore, where legislation of this character is concerned and where the protection of the Federal Constitution is sought, the question necessarily arises, Is this a fair, reasonable, and appropriate exercise of the police power of the State, or is it an unreasonable, unnecessary, and arbitrary interference with the right of the individual to his personal liberty or to enter into those contracts in relation to labor which may seem to him appropriate or necessary for the support of himself and his family? Of course the liberty of contract relating to labor includes both parties to it. The one has as much right to purchase as the other to sell labor.

This is not a question of substituting the judgment of the court for that of the legislature. If the act be within the power of the State it is valid, although the judgment of the court might be totally opposed to the enactment of such a law. But the question would still remain, Is it within the police power of the State? And that question must be answered by the court.

The question whether this act is valid as a labor law pure and simple may be dismissed in a few words. There is no reasonable ground for interfering with the liberty of person or the right of free contract by determining the hours of labor in the occupation of a baker. There is no contention that bakers as a class are not equal in intelligence and capacity to men in other trades or manual occupations, or that they are not able to assert their rights and care for themselves without the protecting arm of the State interfering with their independence of judgment and of action. They are in no sense wards of the State. Viewed in the light of a purely labor law, with no reference whatever to the question of health, we think that a law like the one before us involves neither the safety, the morals, nor the welfare of the public, and that the interest of the public is not in the slightest degree affected by such an act. The law must be upheld, if at all, as a law pertaining to the health of the individual engaged in the occupation of a baker. It does not affect any other portion of the public than those who are engaged in that occupation. Clean and wholesome bread does not depend upon whether the baker works but ten hours per day or only sixty hours a week. The limitation of the hours of labor does not come within the police power on that ground.

It is a question of which of two powers or rights shall prevail—the power of the State to legislate or the right of the individual to liberty of person and freedom of contract. The mere assertion that the subject relates though but in a remote degree to the public health does not necessarily render the enactment valid. The act must have a more direct relation, as a means to an end, and the end itself must be appropriate and legitimate, before an act can be held to be valid which interferes with the general right of an individual to be free in his person and in his power to contract in relation to his own labor.

This case has caused much diversity of opinion in the State courts. In the supreme court two of the five judges composing the court dissented from the judgment affirming the validity of the act. In the court of appeals three of the seven judges also dissented from the judgment upholding the statute. Although found in what is called a labor law of the State, the court of appeals has upheld the act as one relating to the public health—in other words, as a health law. One of the judges of the court of appeals, in upholding the law, stated that, in his opinion, the regulation in question could not be sustained unless they were able to say, from common knowledge, that working in a bakery and candy factory was an unhealthy employment. The judge held that, while the evidence was not uniform, it still led him to the conclusion that the occupation of a baker or confectioner was unhealthy and tended to result in diseases of the respiratory organs. Three of the judges dissented from that view, and they thought the occupation of a baker was not to such an extent unhealthy as to warrant the interference of the legislature with the liberty of the individual.

We think the limit of the police power has been reached and passed in this case. There is, in our judgment, no reasonable foundation for holding this to be necessary or appropriate as a health law to safeguard the public health or the health of the individuals who are following the trade of a baker. If this statute be valid, and if, therefore, a proper case is made out in which to deny the right of an individual, *sui juris*, as employer or employee, to make contracts for the labor of the latter under the protection of the provisions of the Federal Constitution, there would seem to be no length to which legislation of this nature might not go. The case differs widely, as we have already stated, from the expressions of this court in regard to laws of this nature, as stated in *Holden* v. *Hardy* and *Jacobson* v. *Massachusetts*, *supra*.

We think that there can be no fair doubt that the trade of a baker, in and of itself, is not an unhealthy one to that degree which would authorize the legislature to interfere with the right to labor, and with the right of free contract on the part of the individual, either as employer or employee. In looking through statistics regarding all trades and occupations, it may be true that the trade of a baker does not appear to be as healthy as some other trades, and is also vastly more healthy than still others. To the common understanding the trade of a baker has never been regarded as an unhealthy one. Very likely physicians would not recommend the exercise of that or of any other trade as a remedy for ill health. Some occupations are more healthy than others, but we think there are none which might not come under the power of the legislature to supervise and control the hours of working therein, if the mere fact that the occupation is not absolutely and perfectly healthy is to confer that right upon the legislative department of the Government. It might be safely affirmed that almost all occupations more or less affect the health. There must be more than the mere fact of the possible existence of some small amount of unhealthiness to warrant legislative interference with liberty. It is unfortunately true that labor, even in any Department, may possibly carry with it the seeds of unhealthiness. But are we all, on that account, at the mercy of legislative majorities? A printer, a tinsmith, a locksmith, a carpenter, a cabinetmaker, a dry-goods clerk, a bank's, a lawyer's, or a physician's clerk, or a clerk in almost any kind of business, would all come under the power of the legislature, on this assumption. No trade, no occupation, no mode of earning one's living, could escape this all-pervading power, and the acts of the legislature in limiting the hours of labor in all employments would be valid, although such limitation might seriously cripple the ability of the laborer to support himself and his family. In our large cities there are many buildings into which the sun penetrates for but a short time in each day, and these buildings are occupied by people carrying on the business of bankers, brokers, lawyers, real estate, and many other kinds of business, aided by many clerks, messengers, and other employees. Upon the assumption of the validity of this act under review, it is not possible to say that an act, prohibiting lawyers' or bank clerks, or others, from contracting to labor for their employers more than eight hours a day, would be invalid. It might be said that it is unhealthy to work more that that number of hours in an apartment lighted by artificial light during the working hours of the day; that the occupation of the bank clerk, the lawyer's clerk, the real-estate clerk, or the broker's clerk in such offices is therefore unhealthy, and the legislature in its paternal wisdom must, therefore, have the right to legislate on the subject of and to limit the hours for such labor, and if it exercises that power and its validity be questioned, it is sufficient to say, it

has reference to the public health; it has reference to the health of the employees condemned to labor day after day in buildings where the sun never shines; it is a health law, and therefore it is valid, and cannot be questioned by the courts.

It is also urged, pursuing the same line of argument, that it is to the interest of the State that its population should be strong and robust, and therefore any legislation which may be said to tend to make people healthy must be valid as health laws, enacted under the police power. If this be a valid argument and a justification for this kind of legislation, it follows that the protection of the Federal Constitution from undue interference with liberty of person and freedom of contract is visionary, wherever the law is sought to be justified as a valid exercise of the police power. Scarcely any law but might find shelter under such assumptions, and conduct, properly so called, as well as contract, would come under the restrictive sway of the legislature. Not only the hours of employees, but the hours of employers, could be regulated, and doctors, lawyers, scientists, all professional men, as well as athletes and artisans, could be forbidden to fatigue their brains and bodies by prolonged hours of exercise, lest the fighting strength of the State be impaired. We mention these extreme cases because the contention is extreme. We do not believe in the soundness of the views which uphold this law. On the contrary, we think that such a law as this, although passed in the assumed exercise of the police power, and as relating to the public health, or the health of the employees named, is not within that power, and is invalid. The act is not, within any fair meaning of the term, a health law, but is an illegal interference with the rights of individuals, both employers and employees, to make contracts regarding labor upon such terms as they may think best, or which they may agree upon with the other parties to such contracts. Statutes of the nature of that under review, limiting the hours in which grown and intelligent men may labor to earn their living, are mere meddlesome interferences with the rights of the individual, and they are not saved from condemnation by the claim that they are passed in the exercise of the police power and upon the subject of the health of the individual whose rights are interfered with, unless there be some fair ground, reasonable in and of itself, to say that there is material danger to the public health or to the health of the employees, if the hours of labor are not curtailed. If this be not clearly the case the individuals, whose rights are thus made the subject of legislative interference, are under the protection of the Federal Constitution regarding their liberty of contract as well as of person; and the legislature of the State has no power to limit their right as proposed in this statute. All that it could properly do has been done by it with regard to the conduct of bakeries, as provided for in the other sections of the act, above set forth. These several sections provide for the inspection of the premises where the bakery is carried on, with regard to furnishing proper wash rooms and water-closets, apart from the bake room, also with regard to providing proper drainage, plumbing, and painting; the sections, in addition, provide for the height of the ceiling, the cementing or tiling of floors, where necessary in the opinion of the factory inspector, and for other things of that nature; alterations are also provided for and are to be made where necessary in the opinion of the inspector, in order to comply with the provisions of the statute. These various sections may be wise and valid regulations, and they certainly go to the full extent of providing for the cleanliness and the healthiness, so far as possible, of the quarters in which bakeries are to be conducted. Adding to all these requirements a prohibition to enter into any contract of labor in a bakery for more than a certain number of hours a week is, in our judgment, so wholly beside the matter of a proper, reasonable, and fair provision as to run counter to that liberty of person and of free contract provided for in the Federal Constitution.

It was further urged on the argument that restricting the hours of labor in the case of bakers was valid because it tended to cleanliness on the part of the workers, as a man was more apt to be cleanly when not overworked, and if cleanly, then his "output" was also more likely to be so. What has already been said applies with equal force to this contention. We do not admit the reasoning to be sufficient to justify the claimed right of such interference. The State in that case would assume the position of a supervisor, or *pater familias*, over every act of the individual, and its right of governmental interference with his hours of labor, his hours of exercise, the character thereof, and the extent to which it shall be carried would be recognized and upheld.

In our judgment it is not possible, in fact, to discover the connection between the number of hours a baker may work in the bakery and the healthful quality of the bread made by the workman. The connection, if any exist, is too shadowy and thin to build any argument for the interference of the legislature. If the man works ten hours a day it is all right, but if ten and a half or eleven his health is in danger and his bread may be unhealthy, and, therefore, he shall not be permitted to do it. This, we think, is unreasonable and entirely arbitrary. When assertions such as we have adverted to become necessary in order to give, if possible, a plausible foundation for the contention that the law is a "health law," it gives rise to at least a suspicion that there was some other motive dominating the legislature than the purpose to subserve the public health or welfare.

This interference on the part of the legislatures of the several States with the ordinary trades and occupations of the people seems to be on the increase. In the supreme court of New York, in the case of *People* v. *Beattie*, appellate division, first department, decided in 1904 (89 N. Y. Supp., 193), a statute regulating the trade of horseshoeing, and requiring the person practicing such trade to be examined and to obtain a certificate from a board of examiners and file the same with the clerk of the county wherein the person proposes to practice such trade, was held invalid, as an arbitrary interference with personal liberty and private property without due process of law. The attempt was made, unsuccessfully, to justify it as a health law.

The same kind of a statute was held invalid (*In re Aubry*) by the supreme court of Washington in December, 1904. (78 Pac. Rep., 900.) The court held that the act deprived citizens of their liberty and property without due process of law and denied to them the equal protection of the laws. It also held that the trade of a horseshoer is not a subject of regulation under the police power of the State, as a business concerning and directly affecting the health, welfare, or comfort of its inhabitants; and that therefore a law which provided for the examination and registration of horseshoers in certain cities was unconstitutional, as an illegitimate exercise of the police power.

The supreme court of Illinois, in *Bessette* v. *People* (193 Ill., 334), also held that a law of the same nature, providing for the regulation and licensing of horseshoers, was unconstitutional as an illegal interference with the liberty of the individual in adopting and pursuing such calling as he may choose, subject only to the restraint necessary to secure the common welfare. See also *Godcharles* v. *Wigeman* (113 Penn. St., 431, 437); *Low* v. *Rees Printing Co.* (41 Neb., 127, 145). In these cases the courts upheld the right of free contract and the right to purchase and sell labor upon such terms as the parties may agree to.

It is impossible for us to shut our eyes to the fact that many of the laws of this character, while passed under what is claimed to be the police power for the purpose of protecting the public health or welfare, are in reality passed from other motives. We are justified in saying so when, from the character of the law and the subject upon which it legislates, it is apparent that the public health or welfare bears but the most remote relation to the law. The purpose of a statute must be determined from the natural and legal effect of the language employed; and whether it is or is not repugnant to the Constitution of the United States must be determined from the natural effect of such statutes when put into operation, and not from their proclaimed purpose. (*Minnesota* v. *Barber*, 136 U. S., 313; *Brimmer* v. *Rebman*, 138 id., 78.) The court looks beyond the mere letter of the law in such cases. (*Yick Wo* v. *Hopkins*, 118 U. S., 356.)

It is manifest to us that the limitation of the hours of labor as provided for in this section of the statute under which the indictment was found, and the plaintiff in error convicted, has no such direct relation to and no such substantial effect upon the health of the employee as to justify us in regarding the section as really a health law. It seems to us that the real object and purpose were simply to regulate the hours of labor between the master and his employees (all being men, *sui juris*) in a private business, not dangerous in any degree to morals or in any real and substantial degree to the health of the employees. Under such circumstances the freedom of master and employee to contract with each other in relation to their employment, and in defining the same, can not be prohibited or interfered with without violating the Federal Constitution.

The judgment of the court of appeals of New York, as well as that of the supreme court and of the county court of Oneida County, must be reversed and the case remanded to the county court for further proceedings not inconsistent with this opinion.

Reversed.

Supreme Court of the United States—No. 292—October term, 1904.

JOSEPH LOCHNER, PLAINTIFF IN ERROR, v. THE PEOPLE OF THE STATE OF NEW YORK.

In error to the county court of Oneida County, State of New York.

[April 17, 1905.]

Mr. Justice HARLAN (with whom Mr. Justice WHITE and Mr. Justice DAY concurred) dissenting:

While this court has not attempted to mark the precise boundaries of what is called the police power of the State, the existence of the power has been uniformly recognized, equally by the Federal and State courts.

All the cases agree that this power extends at least to the protection of the lives, the health, and the safety of the public against the injurious exercise by any citizen of his own rights.

In *Patterson* v. *Kentucky* (97 U. S., 501), after referring to the general principle that rights given by the Constitution cannot be impaired by State legislation of any kind, this court said: "It [this court] has, nevertheless, with marked distinctness and uniformity, recognized the necessity, growing out of the fundamental conditions of civil society, of upholding State police regulations which were enacted in good faith, and had appropriate and direct connection with that protection to life, health, and property which each State owes to her citizens." So in *Barbier* v. *Connolly* (113 U. S., 27): "But neither the [14th] amendment—broad and comprehensive as it is—nor any other amendment was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people."

Speaking generally, the State in the exercise of its powers may not unduly interfere with the right of the citizen to enter into contracts that may be necessary and essential in the enjoyment of the inherent rights belonging to everyone, among which rights is the right "to be free in the enjoyment of all his faculties, to be free to use them in all lawful ways, to live and work where he will, to earn his livelihood by any lawful calling, to pursue any livelihood or avocation." This was declared in *Allgeyer* v. *Louisiana* (165 U. S., 578, 589). But in the same case it was conceded that the right to contract in relation to persons and property or to do business, within a State, may be "regulated and sometimes prohibited, when the contracts or business conflicted with the policy of the State as contained in its statutes" (p. 591).

So, as said in *Holden* v. *Hardy* (169 U. S., 366, 391): "This right of contract, however, is itself subject to certain limitations which the State may lawfully impose in the exercise of its police powers. While this power is inherent in all governments, it has doubtless been greatly expanded in its application during the past century, owing to an enormous increase in the number of occupations which are dangerous, or so far detrimental to the health of the employés as to demand special precautions for their well-being and protection, or the safety of adjacent property. While this court has held, notably in the cases of *Davidson* v. *New Orleans* (96 U. S., 97) and *Yick Wo* v. *Hopkins* (118 U. S., 356), that the police power cannot be put forward as an excuse for oppressive and unjust legislation, it may be lawfully resorted to for the purpose of preserving the public health, safety, or morals, or the abatement of public nuisances, and a large discretion 'is necessarily vested in the legislature to determine not only what the interests of the public require, but what measures are necessary for the protection of such interests.' (*Lawton* v. *Steele*, 152 U. S., 133, 136.)" Referring to the limitations placed by the State upon the hours of workmen, the court in the same case said (p. 395): "These employments, when too long pursued, the legislature has judged to be detrimental to the health of the employés, and, so long as there are reasonable grounds for believing that this is so, its decision upon this subject cannot be reviewed by the Federal courts."

Subsequently in *Gundling* v. *Chicago* (177 U. S., 183, 188), this court said: "Regulations respecting the pursuit of a lawful trade or business are of very frequent occurrence in the various cities of the country, and what such regulations shall be and to what particular trade, business, or occupation they shall apply, are questions for the State to determine, and their determination comes within the proper exercise of the police power by the State, and unless the regulations are so utterly unreasonable and extravagant in their nature and purpose that the property and personal rights of the citizen are unnecessarily,

and in a manner wholly arbitrary, interfered with or destroyed without due process of law, they do not extend beyond the power of the State to pass, and they form no subject for Federal interference. As stated in *Crowley* v. *Christensen* (137 U. S., 86), 'the possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order, and morals of the community.'"

In *St. Louis, Iron Mountain &c. Ry.* v. *Paul* (173 U. S., 404, 409) and in *Knoxville Iron Co.* v. *Harbison* (183 U. S., 13, 21–2) it was distinctly adjudged that the right of contract was not "absolute, but may be subjected to the restraints demanded by the safety and welfare of the State." Those cases illustrate the extent to which the State may restrict or interfere with the exercise of the right of contracting.

The authorities on the same line are so numerous that further citations are unnecessary.

I take it to be firmly established that what is called the liberty of contract may, within certain limits, be subjected to regulations designed and calculated to promote the general welfare or to guard the public health, the public morals, or the public safety. "The liberty secured by the Constitution of the United States to every person within its jurisdiction does not import," this court has recently said, "an absolute right in each person to be at all times and in all circumstances wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good." (*Jacobson* v. *Massachusetts*, 196 U. S., 11.)

Granting, then, that there is a liberty of contract which cannot be violated even under the sanction of direct legislative enactment, but assuming, as according to settled law we may assume, that such liberty of contract is subject to such regulations as the State may reasonably prescribe for the common good and the well-being of society, what are the conditions under which the judiciary may declare such regulations to be in excess of legislative authority and void? Upon this point there is no room for dispute; for the rule is universal that a legislative enactment, Federal or State, is never to be disregarded or held invalid unless it be, beyond question, plainly and palpably in excess of legislative power. In *Jacobson* v. *Massachusetts*, *supra*, we said that the power of the courts to review legislative action in respect of a matter affecting the general welfare exists *only* "when that which the legislature has done comes within the rule that if a statute purporting to have been enacted to protect the public health, the public morals, or the public safety has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law"—citing *Mugler* v. *Kansas* (123 U. S., 623, 661), *Minnesota* v. *Barber* (136 U. S., 313, 320), *Atkin* v. *Kansas* (191 U. S., 207, 223). If there be doubt as to the validity of the statute, that doubt must therefore be resolved in favor of its validity, and the courts must keep their hands off, leaving the legislature to meet the responsibility for unwise legislation. If the end which the legislature seeks to accomplish be one to which its power extends, and if the means employed to that end, although not the wisest or best, are yet not plainly and palpably unauthorized by law, then the court cannot interfere. In other words, when the validity of a statute is questioned, the burden of proof, so to speak, is upon those who assert it to be unconstitutional. (*McCulloch* v. *State of Maryland*, 4 Wheat., 316, 421.)

Let these principles be applied to the present case. By the statute in question it is provided that, "No employee shall be required or permitted to work in a biscuit, bread, or cake bakery or confectionery establishment more than sixty hours in any one week, or more than ten hours in any one day, unless for the purpose of making a shorter work day on the last day of the week; nor more hours in any one week than will make an average of ten hours per day for the number of days during such week in which such employee shall work."

It is plain that this statute was enacted in order to protect the physical well-being of those who work in bakery and confectionery establishments. It may be that the statute had its origin, in part, in the belief that employers and employees in such establishments were not upon an equal footing, and that the necessities of the latter often compelled them to submit to such exactions as unduly taxed their strength. Be this as it may, the statute must be taken as expressing the belief of the people of New York that, as a general rule, and in the case of the average man, labor in excess of sixty hours during a week in such establishments may endanger the health of those who thus labor. Whether

or not this be wise legislation it is not the province of the court to inquire. Under our systems of government the courts are not concerned with the wisdom or policy of legislation. So that in determining the question of power to interfere with liberty of contract, the court may inquire whether the means devised by the State are germane to an end which may be lawfully accomplished and have a real or substantial relation to the protection of health, as involved in the daily work of the persons, male and female, engaged in bakery and confectionery establishments. But when this inquiry is entered upon I find it impossible, in view of common experience, to say that there is here no real or substantial relation between the means employed by the State and the end sought to be accomplished by its legislation. (*Mugler* v. *Kansas*, *supra*.) Nor can I say that the statute has no appropriate or direct connection with that protection to health which each State owes to her citizens (*Patterson* v. *Kentucky*, *supra*); or that it is not promotive of the health of the employés in question (*Holden* v. *Hardy*, *Lawton* v. *Steele*, *supra*); or that the regulation prescribed by the State is utterly unreasonable and extravagant or wholly arbitrary (*Gundling* v. *Chicago*, *supra*). Still less can I say that the statute is, beyond question, a plain, palpable invasion of rights secured by the fundamental law. (*Jacobson* v. *Massachusetts*, *supra*.) Therefore I submit that this court will transcend its functions if it assumes to annul the statutes of New York. It must be remembered that this statute does not apply to all kinds of business. It applies only to work in bakery and confectionery establishments, in which, as all know, the air constantly breathed by workmen is not as pure and healthful as that to be found in some other establishments or out of doors.

Professor Hirt in his treatise on the Diseases of the Workers has said: "The labor of the bakers is among the hardest and most laborious imaginable, because it has to be performed under conditions injurious to the health of those engaged it in. It is hard, very hard work, not only because it requires a great deal of physical exertion in an overheated workshop and during unreasonably long hours, but more so because of the erratic demands of the public, compelling the baker to perform the greater part of his work at night, thus depriving him of an opportunity to enjoy the necessary rest and sleep, a fact which is highly injurious to his health." Another writer says: "The constant inhaling of flour dust causes inflammation of the lungs and of the bronchial tubes. The eyes also suffer through this dust, which is responsible for the many cases of running eyes among the bakers. The long hours of toil to which all bakers are subjected produces rheumatism, cramps, and swollen legs. The intense heat in the workshops induces the workers to resort to cooling drinks, which, together with their habit of exposing the greater part of their bodies to the change in the atmosphere, is another source of a number of diseases of various organs. Nearly all bakers are palefaced and of more delicate health than the workers of other crafts, which is chiefly due to their hard work and their irregular and unnatural mode of living, whereby the power of resistance against disease is greatly diminished. The average age of a baker is below that of other workmen: they seldom live over their fiftieth year, most of them dying between the ages of forty and fifty. During periods of epidemic diseases the bakers are generally the first to succumb to the disease, and the number swept away during such periods far exceeds the number of other crafts in comparison to the men employed in the respective industries. When, in 1720, the plague visited the city of Marseilles, France, every baker in the city succumbed to the epidemic, which caused considerable excitement in the neighboring cities and resulted in measures for the sanitary protection of the bakers."

In the eighteenth annual report by the New York bureau of statistics of labor it is stated that among the occupations involving exposure to conditions that interfere with nutrition is that of the baker (p. 52). In that report it is also stated that "from a social point of view production will be increased by any change in industrial organization which diminishes the number of idlers, paupers, and criminals. Shorter hours of work, by allowing higher standards of comfort and purer family life, promise to enhance the industrial efficiency of the wage-working class—improved health, longer life, more content, and greater intelligence and inventiveness" (p. 82).

Statistics show that the average daily working time among workingmen in different countries is in Australia, 8 hours; in Great Britain, 9; in the United States, 9¾; in Denmark, 9¾; in Norway, 10; Sweden, France, and Switzerland, 10½; Germany, 10¼; Belgium, Italy, and Austria, 11; and in Russia, 12 hours.

We judicially know that the question of the number of hours during which a workman should continuously labor has been, for a long period, and is yet, a

subject of serious consideration among civilized peoples and by those having special knowledge of the laws of health. Suppose the statute prohibited labor in bakery and confectionery establishments in excess of eighteen hours each day. No one, I take it, could dispute the power of the State to enact such a statute. But the statute before us does not embrace extreme or exceptional cases. It may be said to occupy a middle ground in respect of the hours of labor. What is the true ground for the State to take between legitimate protection, by legislation, of the public health and liberty of contract is not a question easily solved, nor one in respect of which there is or can be absolute certainty. There are very few, if any, questions in political economy about which entire certainty may be predicated. One writer on relation of the State to labor has well said: "The manner, occasion, and degress in which the State may interfere with the industrial freedom of its citizens is one of the most debatable and difficult questions of social science." (*Jevons*, 33.)

We also judicially know that the number of hours that should constitute a day's labor in particular occupations, involving the physical strength and safety of workmen, has been the subject of enactments by Congress and by nearly all of the States. Many, if not most, of these enactments fix eight hours as the proper basis of a day's labor.

I do not stop to consider whether any particular view of this economic question presents the sounder theory. What the precise facts are it may be difficult to say. It is enough for the determination of this case, and it is enough for this court to know that the question is one about which there is room for debate and for an honest difference of opinion. There are many reasons of a weighty, substantial character, based upon the experience of mankind, in support of the theory that, all things considered, more than ten hours' steady work each day, from week to week, in a bakery or confectionery establishment may endanger the health and shorten the lives of the workmen, thereby diminishing their physical and mental capacity to serve the State and to provide for those dependent upon them.

If such reasons exist that ought to be the end of this case, for the State is not amenable to the judiciary in respect of its legislative enactments, unless such enactments are plainly, palpably, beyond all question, inconsistent with the Constitution of the United States. We are not to presume that the State of New York has acted in bad faith, nor can we assume that its legislature acted without due deliberation, or that it did not determine this question upon the fullest attainable information and for the common good. We can not say that the State has acted without reason, nor ought we to proceed upon the theory that its action is a mere sham. Our duty, I submit, is to sustain the statute as not being in conflict with the Federal Constitution, for the reason—and such is an all-sufficient reason—it is not shown to be plainly and palpably inconsistent with that instrument. Let the State alone in the management of its purely domestic affairs, so long as it does not appear beyond all question that it has violated the Federal Constitution. This view necessarily results from the principle that the health and safety of the people of a State are primarily for the State to guard and protect.

I take leave to say that the New York statute, in the particulars here involved, cannot be held to be in conflict with the fourteenth amendment without enlarging the scope of the amendment far beyond its original purpose and without bringing under the supervision of this court matters which have been supposed to belong exclusively to the legislative departments of the several States when exerting their conceded power to guard the health and safety of their citizens by such regulations as they in their wisdom deem best. "Health laws of every description constitute," said Chief Justice Marshall, a part of that mass of legislation which "embraces everything within the territory of a State not surrendered to the General Government and which could be most advantageously exercised by the States themselves." (*Gibbons* v. *Ogden*, 9 *Wheat.*, 1, 203.) A decision that the New York statute is void under the fourteenth amendment will, in my opinion, involve consequences of a far-reaching and mischievous character, for such a decision would seriously cripple the inherent power of the States to care for the lives, health, and well-being of their citizens. Those are matters which can be best controlled by the States. The preservation of the just powers of the States is quite as vital as the preservation of the powers of the General Government.

When this court had before it the question of the constitutionality of a statute of Kansas making it a criminal offence for a contractor for public work to permit or require his employé to perform labor upon such work in excess

of eight hours each day, it was contended that the statute was in derogation of the liberty both of employés and employer. It was further contended that the Kansas statute was mischievous in its tendencies. This court, while disposing of the question only as it affected public work, held that the Kansas statute was not void under the fourteenth amendment. But it took occasion to say what may well be here repeated: "The responsibility therefor rests upon legislators, not upon the courts. No evils arising from such legislation could be more far-reaching than those that might come to our system of government if the judiciary, abandoning the sphere assigned to it by the fundamental law, should enter the domain of legislation, and upon grounds merely of justice or reason or wisdom annul statutes that had received the sanction of the people's representatives. We are reminded by counsel that it is the solemn duty of the courts in cases before them to guard the constitutional rights of the citizen against merely arbitrary power. That is unquestionably true. But it is equally true—indeed, the public interests imperatively demand—that legislative enactments should be recognized and enforced by the courts as embodying the will of the people unless they are plainly and palpably beyond all question in violation of the fundamental law of the Constitution." (*Atkin* v. *Kansas*, 191 *U. S.*, 207, 223.)

The judgment, in my opinion, should be affirmed.

Supreme Court of the United States.—No. 292.—October term, 1904.

JOSEPH LOCHNER, PLAINTIFF IN ERROR, V. THE PEOPLE OF THE STATE OF NEW YORK.

In error to the county court of Oneida County, State of New York.

[April 17, 1905.]

Mr. Justice HOLMES dissenting:

I regret sincerely that I am unable to agree with the judgment in this case, and that I think it my duty to express my dissent.

This case is decided upon an economic theory which a large part of the country does not entertain. If it were a question whether I agreed with that theory, I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law. It is settled by various decisions of this court that State constitutions and State laws may regulate life in many ways which we as legislators might think as injudicious or if you like as tyrannical as this, and which equally with this interfere with the liberty to contract. Sunday laws and usury laws are ancient examples. A more modern one is the prohibition of lotteries. The liberty of the citizen to do as he likes so long as he does not interfere with the liberty of others to do the same, which has been a shibboleth for some well-known writers, is interfered with by school laws, by the Post-Office, by every State or municipal institution which takes his money for purposes thought desirable, whether he likes it or not. The fourteenth amendment does not enact Mr. Herbert Spencer's Social Statics. The other day we sustained the Massachusetts vaccination law. (*Jacobson* v. *Massachusetts*, 197 U. S.) United States and State statutes and decisions cutting down the liberty to contract by way of combination are familiar to his court. (*Northern Securities Co.* v. *United States*, 193 U. S. 197.) Two years ago we upheld the prohibition of sales of stock on margins or for future delivery in the constitution of California. (*Otis* v. *Parker*, 187 U. S., 606.) The decision sustaining an eight-hour law for miners is still recent. (*Holden* v. *Hardy*, 169 U. S., 366.) Some of these laws embody convictions or prejudices which judges are likely to share. Some may not. But a constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the State or of *laissez faire*. It is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar or novel and even shocking ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States.

General propositions do not decide concrete cases. The decision will depend on a judgment or intuition more subtle than any articulate major premise. But I think that the proposition just stated, if it is accepted, will carry us far toward the end. Every opinion tends to become a law. I think that the word liberty in the fourteenth amendment is perverted when it is held to prevent the natural outcome of a dominant opinion, unless it can be said that a rational and fair man necessarily would admit that the statute proposed would infringe fundamental principles as they have been understood by the traditions of our people and our law. It does not need research to show that no such sweeping condemnation can be passed upon the statute before us. A reasonable man might think it a proper measure on the score of health. Men whom I certainly could not pronounce unreasonable would uphold it as a first instalment of a general regulation of the hours of work. Whether in the latter aspect it would be open to the charge of inequality I think it unnecessary to discuss.

No. 38. Harry J. Cantwell et al., plaintiffs in error, *v.* The State of Missouri. In error to the supreme court of the State of Missouri. Judgment affirmed with costs. Holden *v.* Hardy, 169 U. S., 366; Jacobson *v.* Massachusetts, 197 U. S., 11; Jackson *v.* Lamphire, 3 Pet., 280. Case below, State *v.* Cantwell, 179 Mo., 245.

[Pittsburg Post, October 4, 1904.]

OVERWORK NO LEGAL EXCUSE—RAILROAD MEN SHOULD QUIT WORK AND LOSE JOBS WHEN EXHAUSTED, ACCORDING TO JUDGE.

PHILADELPHIA, *October 3.*

Judge Swartz, in the Montgomery County court, at Norristown, to-day refused to affirm a point in law submitted by an attorney that when a railroad employee falls asleep from physical weakness, from illness, or from weariness from long hours of steady employment and accident happenings, the employee should be acquitted. The case was that of John F. Fleischutt, of Pottsville, Pa., an engineer on a Pennsylvania Railroad freight train. The freight train and a passenger train collided near Pottstown last April; two persons were killed and a dozen injured. The crew of the freight train were held by the coroner for criminal negligence.

Fleischutt was the first to be tried. It was testified by the fireman that the freight train had been ordered to wait on a siding until four trains had passed. He said the crew had been on duty for twenty-two hours, and that while waiting for the trains to pass they had fallen asleep. Before the fourth train had passed the men awoke, and thinking that the fourth had gone by, the freight train was taken from a siding.

Before the case went to the jury Fleischutt's attorneys made the point above stated. In refusing to affirm it, Judge Swartz held that no man had a right to work on a railroad unless in fine physical condition, and if he fell asleep, no matter from what cause, he should discontinue work, even though he should lose his position, rather than jeopardize human life by continuing on duty.

Fleischutt was convicted. The trial of the conductor will begin to-morrow.

[Pittsburg Press, October 4, 1904—Editorial.]

THE SCAPEGOAT IN OVERALLS.

Judge Swartz, in the county court at Norristown, Montgomery County, has decided that where the members of a crew of a railroad train have fallen asleep from sheer exhaustion after being compelled to remain on duty twenty-two consecutive hours, they are responsible for any accidents that may occur through their inattention.

In conformity with this ruling, a jury yesterday convicted one member of such a crew of manslaughter. The other members of the crew will now be placed on trial on the same charge. The circumstances of the case are briefly

these: The crew was kept on duty continuously for twenty-two hours by the order of responsible officials of the road. The train was sidetracked to await the passing of four other trains. While waiting the men fell asleep, and after a while pulled their train out across the main track, fancying that they had heard all four of the other trains pass, whereas only three had passed. Consequently, there was a wreck, and two lives were lost.

Judge Swartz told the jury that no matter how tired the men in the crew were and no matter how impossible it would have been for them to keep awake, they were guilty, inasmuch as when they found themselves succumbing to their exhaustion they should have quit work.

It is quite evident that Judge Swartz never worked twenty-two hours at a stretch. The sleep that comes on from overexertion of this sort does not stand upon formalities. It is on its victim before he knows it, and certainly there would not be a more absurd idea in the world than to suppose that every time an overworked railroader feels himself getting drowsy he should pinch himself heroically and say, "I have worked longer than is good for me. I am sleepy. I fear slumber is overtaking me, and I must at once wire my resignation to—to—well, who in blazes shall I wire my resignation to, anyhow, before I go clean over and there is a wreck?"

Perhaps Swartz thinks it is an uncommon thing for railroad train men to go to sleep on duty, or to be overworked. If so, he should interview a number of old employees of any of the great railroads confidentially. If they threw up their jobs every time they are kept on duty longer than is conducive to the safety of the traveling public, the freight congestion would become a great deal worse at most of our large cities than even Pittsburg ever before saw it.

It is, in fact, quite reasonable to suppose that more accidents occur through the exhaustion of men worked overtime than the public generally supposes. And if the men quit every time the demand is made upon them the prospect for themselves and their families would be distressing.

Various learned laymen have promptly taken occasion to assure Judge Swartz that he is right and that his opinion, on which the conviction was secured, is good law, as well as good sense. It may, indeed, prove to be law in Pennsylvania, but that does not prove that it would be held law anywhere else. There was negligence beyond doubt. But whose negligence was it—that of the man who issued the order for a crew to work twenty-two hours or the men who, in good faith and in the pursuit of humble, honest industry, tried their best to carry the order out? Who played the rôle of agent and who the rôle of principal, and why should the penalty for the consequences of the negligence be visited upon the agents and not upon the principal also? The crew's going to sleep was not a remote or an improbable result of the order. On the contrary, it was the very result that ought to have been expected, and as such makes the responsibility of the master who directed as immediate and direct as that of the servant. It is true that the servant need not have obeyed the order—he might, you know, have hunted the telegraph office and thrown up his job—but are we to understand that the master is relieved of all responsibility for his criminally negligent order because the servant tried to carry it out?

If the president or superintendent of the road on which this affair occurred is not tried for manslaughter it will be said, with some plausibility, that the reason why they were exempt and their subordinates made to carry the whole burden was simply that the latter were men in overalls. Is it true that the man in overalls has not the same chance with the law as the man in broadcloth? Judge Swartz, of Montgomery, would doubtless answer, "No; it is not true." But the poor freight brakeman and conductor who have wakened out of their helpless sleep to find prison walls opening up to receive them are unquestionably of a different opinion.

The case ought to be appealed. As it now stands, the most innocent is held the most guilty. No Pennsylvania court should be permitted to make this sort of thing law without recourse to the highest adjudicature available. For it takes the burden from the shoulders of the strong and places it on those of the weak, and will never promote security of life and limb, for the reason that as long as railroad managers are held irresponsible for the reasonable consequences of such orders as that a crew shall work continuously for twenty-two hours we shall have such orders regardless of everything, and men obliged to depend on their wages for a livelihood will keep on in a more or less ineffectual effort to carry them out.

The crew and the superintendent and president at Norristown should all have been tried and convicted together, or else all permitted together to go away with impunity, free to cooperate in another wreck.

BILL PROPOSED BY MR. FULLER.

A BILL to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be unlawful for any common carrier by railroad in any Territory of the United States or the District of Columbia, or any of its officers or agents, to require or permit any employee engaged in or connected with the movement of any train to remain on duty more than sixteen consecutive hours, except when by casualty occurring after such employee has started on his trip he is prevented from reaching his terminal; or to require or permit any such employee to go on duty without having had at least ten hours for rest.

That it shall be unlawful for any common carrier engaged in interstate or foreign commerce by railroad, or any of its officers or agents, to require or permit any employee engaged in or connected with the movement of any train in which such commerce is hauled, or to require or permit any employee engaged in or connected with the movement of any train by which such commerce is affected, to remain on duty more than sixteen consecutive hours, except when by casualty occurring after such employee has started on his trip he is prevented from reaching his terminal; or to require or permit any such employee to go on duty without having had at least ten hours for rest.

SEC. 2. That any such common carrier, or any of its officers or agents, violating any of the provisions of this act is hereby declared to be guilty of a misdemeanor, and, upon conviction thereof, shall be liable to a penalty of one thousand dollars for each and every such violation, to be recovered in a suit or suits to be brought by the United States district attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed; and it shall be the duty of such district attorney to bring such suits upon duly verified information being lodged with him of such violation having occurred; and it shall also be the duty of the Interstate Commerce Commission to lodge with the proper district attorneys information of any such violations as may come to its knowledge.

That to enable said Commission to execute and enforce the provisions of this act, it shall employ such inspectors or other persons as may be necessary, and its agents or employees thereunto duly authorized by order of said Commission shall have the power to administer oaths, interrogate witnesses, take testimony, and require the production of books and papers. The Commission may also order depositions taken before any officer in any State or Territory of the United States or the District of Columbia qualified by law to take the same.

STATEMENT OF FRANK T. HAWLEY, ESQ., GRAND MASTER OF THE SWITCHMEN'S UNION OF NORTH AMERICA.

The CHAIRMAN. Will you state your full name?

Mr. HAWLEY. Frank T. Hawley.

The CHAIRMAN. And you are chief of what?

Mr. HAWLEY. I am grand master of the Switchmen's Union of North America.

The CHAIRMAN. Do you know the subject that the committee is now considering?

Mr. HAWLEY. In a general way; yes, sir.

The CHAIRMAN. We have a moment or two before we adjourn, if you choose to avail yourself of it.

Mr. HAWLEY. In a general way I know something of it.

Mr. RYAN. How do the people that you represent feel in connection with this matter?

Mr. HAWLEY. Ours is a separate and distinct occupation from the road service; and we believe that uniform hours should be arranged by mutual agreement with our employers, because we are all located

continuously in one place. We do not move from point to point. We are employed at one place always.

The CHAIRMAN. In your connection with the employees of the railways, have you heard this subject discussed of limiting the hours of employment?

Mr. HAWLEY. Yes, sir.

The CHAIRMAN. What is your idea of the opinion and desire of the employees who would be affected by the legislation? Do they want it or do they not want it?

Mr. HAWLEY. They want it.

The CHAIRMAN. They want it?

Mr. HAWLEY. But let me add a proviso. They do not specify whether it is to be by legislation or by agreement.

The CHAIRMAN. Yes; well, I am asking you particularly with regard to legislation that would interfere with agreement.

Mr. HAWLEY. There is not a man in the railroad service employed in that department represented by Mr. Fuller with whom I have spoken but that wants shorter hours. I have had a good deal of experience in that department myself, and I know it from experience.

The CHAIRMAN. Now, how do they desire to secure those shorter hours—by legislation or by agreement with the companies?

Mr. HAWLEY. I could not answer that. It would be anticipating their intentions.

Mr. CUSHMAN. If it was by agreement with the companies, they might get shorter hours, and also pay that was satisfactory to them; but if it was by legislation they might be obliged to accept the shorter hours without any agreement with the company as to the compensation. Is not that true?

Mr. HAWLEY. Do not ask me to answer that question in relation to this particular law, because it applies to roadmen; but I can answer it safely as applying to yardmen, "yes," because——

Mr. RYAN. You are all domiciled just where you work?

Mr. HAWLEY. Yes, sir. If you will permit me, Congress might make a law shortening the hours of labor to eight for yardmen, since ours is the occupation that appeals more to the public, to the law, and to the employer than any other occupation in the land, owing to the constant dangers of our position, notwithstanding safety devices; for not one moment of our time is performed inside, but outside in all the elements, under the most dangerous conditions. If Congress, then, were to make a law establishing eight hours as the limit of a day's work, and did not have the authority to grant or insist upon a corresponding increase of wages, it would force a fight on our part, and we would rather arrange that mutually—that is, as applied to yardmen only.

Mr. CUSHMAN. Then I take it from what you say that your organization would rather be left to arrange that matter with the company than to have it arranged by law?

Mr. HAWLEY. For yardmen, yes sir; positively yes, sir. But, understand, the conditions under which——

Mr. CUSHMAN. How many yardmen are there in this organization that you represent—how many thousands?

Mr. HAWLEY. Pretty nearly 24,000, sir.

Mr. CUSHMAN. Twenty-four thousand operatives?

Mr. HAWLEY. Yes, sir.

Mr. CUSHMAN. You understand, do you not, that in the case of a switchman engaged in performing work of this kind in reference to what are called interstate, or through, trains, his employment would affect an interstate train just as much as a man who was a brakeman on the train?

Mr. HAWLEY. Yes; but this law applies to those who operate the trains after they are made up.

Mr. TOWNSEND. Another thing, Mr. Hawley, is it true that the men in your class of work are overworked, are obliged to work from sixteen to twenty-four hours continuously?

Mr. HAWLEY. Yes; in a great many places they are.

Mr. CUSHMAN. I want to call your attention to the language of this bill. You say that the bill here would only affect those who are on the trains. Now, this proposed substitute reads:

That it shall be unlawful for any common carrier by railroad in any territory of the United States or the District of Columbia, or any of its officers or agents, to require or permit any employee engaged in or connected with the movement of any train, etc.

Mr. HAWLEY. Is that in this bill here?

Mr. CUSHMAN. That is in this proposed bill, offered by Mr. Fuller this morning.

Mr. ESCH. It is not in the bill you have?

Mr. GAINES. We have here a typewritten substitute, proposed this morning.

Mr. CUSHMAN (reading):

Or connected with the movement of any train, to remain on duty more than sixteen consecutive hours, except when by casualty occurring after such employee has started on his trip he is prevented from reaching his terminal, etc.

Mr. RYAN. In that connection, I want to ask you this question: Do the switchmen, as a matter of fact, want to work more than sixteen hours?

Mr. HAWLEY. No, sir; they do not. They want to work eight hours.

Mr. TOWNSEND. That is the point I was trying to get at. Are you working by the hour or by the day?

Mr. HAWLEY. By the hour.

Mr. FULLER. Will you allow me to ask Mr. Hawley one question?

The CHAIRMAN. Our time is up, Mr. Fuller. You may ask one question, if that is all you wish to do.

Mr. FULLER. I simply want to ask Mr. Hawley whether he appears in opposition to legislation of this kind.

Mr. HAWLEY. Well, I should say not.

(The committee thereupon went into executive session, after which it adjourned.)

HEARING

BEFORE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES

MAY 11, 1906

ON THE BILLS

H. R. 4438, H. R. 16676, and H. R. 18671,

TO LIMIT THE HOURS OF SERVICE
OF RAILROAD EMPLOYEES

WASHINGTON
GOVERNMENT PRINTING OFFICE
1906

HOURS OF SERVICE OF RAILROAD EMPLOYEES.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Friday, May 11, 1906.

The committee met at 11 o'clock a. m., Hon. William P. Hepburn (chairman) in the chair.

STATEMENT OF MR. W. W. BALDWIN, OF BURLINGTON, IOWA.

The CHAIRMAN. Please state whom you represent.

Mr. BALDWIN. I represent the Chicago, Burlington and Quincy Railroad. I am assistant to the president. I have no familiarity, Mr. Chairman, with the practical operations of a railroad, and any questions as to the capacity of locomotives, the capacity of trains, and things of that sort, I would like to ask that Mr. Judson, superintendent of the Illinois division of the road, might answer. He can give you all information upon those matters.

Mr. MANN. There are some other propositions here. As I understand, you want to discuss the general subject?

Mr. BALDWIN. Just the general subject, that is all; particularly the characterization of the service upon the Burlington road in the State of Nebraska, as portrayed before your committee several days ago by Judge Norris. Any railroad service as he described it would be not only bad and inefficient in itself, but costly to the company. It would be expensive not only on account of the loss of business and increased liability to accidents, but locomotives standing on side tracks consume coal, and the wages of trainmen upon delayed trains go on just the same as if the trains were moving on time. No railroad company needs the spur of any Federal statute or threat of fines to induce it to reform such methods if they are shown to exist, but in this case they do not exist. I have submitted these statements of the conduct of the Burlington freight-train service in Nebraska to the operating officials of the Burlington company in Nebraska, and in the territory covered by Judge Norris's district, and I am authorized by them to say that these statements are unfounded.

Mr. MANN. If I recollect, Judge Norris made those statements on his personal information.

Mr. BALDWIN. Judge Norris has been greatly misinformed. Now, of course, the freight-train service on any large railroad is exceedingly varied in its character. It must be performed under all sorts of weather conditions, and is undoubtedly subject to delays and interruptions from numberless causes that are not avoidable, with the greatest of care and with the most efficient management; and it is also true, and I think that ought to be borne in mind by every in-

vestigating committee, that trainmen and traveling men indulge in gossip, and they often multiply the number and magnify the importance of past train delays and interruptions, and these exaggerations of delays and interruptions have been undoubtedly the source of much of the misinformation that has been furnished to Judge Norris. But, as was suggested by one or two in discussing the proposition which has just been referred to, the most important factor in producing irregularities in the western country has been the phenomenal growth of the freight business itself.

In many parts of Judge Norris's district the volume of freight business has more than doubled in recent years. This immense additional traffic thrown upon the railroads has severely taxed their capacity to handle it with the engines and cars that were employed and were adequate for all previous demands upon their capacity. Now, fully loaded cars and well-loaded trains are an imperative necessity if the business of the country is to be handled at all, and that has necessitated more powerful engines and larger cars, and it takes time to get these. The Burlington company, since the 1st of January, 1901, has purchased 574 new locomotive engines, many of them of the largest and most powerful type.

In readjusting the freight service to these new conditions it has been a sort of transition period, when it was necessary to haul many of the larger cars and heavier trains with the old and lighter engines, and delays to freight have doubtless occurred which gossip has erroneously attributed to the Hill system, or the tonnage system, instead of the real cause, which was an abnormal increase in the quantity of freight without a possible corresponding increase in the capacity to handle it. It is a fact that this great expansion of the business of the country, and consequent increased necessity for more economical loading, was coincident in point of time with a partial change in the management of the Burlington road, and that of course had something to do with the supposition in Judge Norris's mind of the powerful influence of what he has described as the tonnage rule. He refers to certain conditions in this business in his territory as being the rule. Now, in fact, they are the rare exceptions. For instance, he says:

> It is a common thing for men to be in continual employment from thirty up to as high as fifty hours—quite an ordinary thing on some of the trains for forty hours to be consumed in going over the division.

Then, in proof of this assertion, he cites the division from Hastings to McCook as being one of the divisions, "about which," he says, "I know more than any other division on that road, or any other road. It became a very common thing for them to start out, and engineer, firemen, brakeman, and conductor to be in continuous service from thirty-five to forty-five hours in going over these divisions."

Now, the distance from Hastings to McCook is 132 miles, and the local freight train leaves Hastings at 7.40 a. m. and is due to reach Oxford (75 miles) at 5 p. m. The train crew then rests at Oxford until 7.30 a. m. the next day and proceeds from Oxford to McCook (57 miles), and reaches McCook from 3 to 5 p. m. If the train reached this destination at 3.40 p. m., of course that crew would have been in continuous service for thirty-two hours from the time of starting at Hastings; but fourteen and five-tenths hours of that time were spent in resting at Oxford.

Mr. TOWNSEND. Are they on time at Oxford usually?

Mr. BALDWIN. I have got the detailed statement of every movement of every train for every day in a month, so that I will present that to you. Now, what I suggest is that if Judge Norris was aware of that important fact that this crew which he said was in continuous service for thirty-five hours in reality rested fourteen and one-half hours at Oxford, he ought to have stated it. If he was aware of it, why did he not disclose it to the committee? In that connection he made the following statement:

> In order to get the benefit of these tonnage rules the local trains west of Hastings were changed in the schedule, so that they ran only twice a week.

That is entirely incorrect. This local train runs every day in the week except Sunday.

Mr. MANN. Is it scheduled to run every day except Sunday?

Mr. BALDWIN. Yes; it is the local train. But his explanation, I think, is worse for his argument than the misstatement. His explanation is this—I am not misstating him—that many other freight trains are run between these points besides this regular so-called "local" train, but that they are called extras, and are without any time schedule, and they are run when they get a load. Now, extra trains are not run unless there is business for them to do, and Judge Norris concedes that the trains are abundant in number for the business. As these extra trains only start, as he says, when they have a full load, they are less liable to delays, they are less liable to have to stop, as the local trains do, to pick up a load, and hence the risk of keeping men on the road in continuous service for an undue length of time is less than on the local trains.

Mr. MANN. His complaint was that you changed the schedule so that the trains on the time card were only run twice a week.

Mr. BALDWIN. That is a mistake. This system of running many freight trains as extras is not peculiar to the Burlington, but prevails generally among railroads, and there is no reason why the practice should tend to keep trainmen longer upon the road than the regulation number of hours. Now, he made this statement:

> Goods from Omaha, St. Joseph, and Kansas City that formerly had been delivered through southern Nebraska, through my country, under the old rule, in from twenty-four to forty-eight hours, were from two weeks to thirty days on the road.

That statement is entirely wrong. Just as soon as that statement reached Lincoln Mr. Byram, the superintendent, telegraphed Mr. G. S. Scott, the agent at McCook, where Judge Norris resides, asking him what was the usual regular average time made in handling merchandise shipments from Kansas City, Omaha, St. Joseph, and Lincoln to McCook, as shown from his books as station agent. Mr. Scott replied immediately as follows:

> Average time, Lincoln to McCook, seventeen hours thirty minutes. Omaha waybills dated May 3 would be ready for delivery on the morning of May 5; St. Joseph ready for delivery May 5, and Kansas City on the morning of May 6.

That is from the books. Mr. Byram also wired the agent at St. Francis, a station at the end of a long branch line in Kansas, and he said:

> The usual average time, ascertained from the waybills, that merchandise freight is en route, is as follows: From Kansas City, four days; St. Joe, four days; Omaha, two days; Lincoln, two days.

Now, here is something that Judge Norris gives to the committee. He said:

I had a conversation with a conductor who had just come from St. Francis. He told me that the depot there was piled full of freight that had been twenty-seven days out of Kansas City. This illustrates what the tonnage rule means to the shipper.

Now, all that there is to that is this: St. Francis is the end of a long branch line, and serves a large territory in western Kansas and eastern Colorado that has no other railroad, and the freight goes to St. Francis and is piled up in the station waiting for the men to come and receive it. That is all there is to that. You can not make anything more out of it. Then here is another bit of gossip given by Judge Norris to the committee——

Mr. MANN. Is St. Francis the end of that line?

Mr. BALDWIN. It is the end of a branch line 133 miles in length.

Mr. MANN. And no other railroad beyond?

Mr. BALDWIN. Yes, sir; with no other railroad beyond. The farmers are busy and they do not come in to get their freight, and it stays piled up there in the station house. Why shouldn't it? There is nothing in that.

Mr. MANN. Is there any of that freight piled up there that is for transshipment?

Mr. BALDWIN. No, sir; it can not be.

Mr. MANN. You are under no obligations if the farmer does not come and get it? You do not deliver it to him?

Mr. BALDWIN. Not out in that country; no.

Mr. ESCH. How big a place is St. Francis?

Mr. BALDWIN. Two hundred or 300 people, I suppose.

Mr. TOWNSEND. Is any of that freight brought in there to be shipped over that railroad in the other direction? What I mean by that is, is any of it to be shipped out of St. Francis?

Mr. BALDWIN. Of course, cattle and——

Mr. TOWNSEND. Does that lie over a long time?

Mr. BALDWIN. No, sir; he does not mean that at all. What is piled up there in the station is what comes in and people do not call for it.

Mr. MANN. Is this on the direct line to Kansas City?

Mr. BALDWIN. It is on a branch line.

Mr. MANN. He states that it comes through to St. Francis from Kansas City without a transfer.

Mr. BALDWIN. That is a mistake. I think it probably has a transfer, perhaps at Hastings or Orleans.

Mr. MANN. The information is that after the freight was delivered to the road at Kansas City, on a direct line without transfer, it took twenty-seven days to get it to the shipper at St. Francis.

Mr. BALDWIN. He did not mean that at all.

Mr. MANN. That is what he meant when he was testifying here.

Mr. BALDWIN. What the conductor told him was that that freight had been piled up there for twenty-seven days.

Mr. MANN. No; he meant that freight piled up there was twenty-seven days from the time it had been delivered to the road for shipment; that it took it twenty-seven days to get there.

Mr. BALDWIN. He did not give any date of shipment, and you can not trace anything like that; but I understood him to say that it had been sitting in the station house for that long.

Mr. RICHARDSON. Have you his statement?

Mr. MANN. He says:

For instance, I recently had a conversation with a conductor who had just come from St. Francis, Kans. That is another line of the Burlington system which runs out of Nebraska into Kansas. He told me that the depot there was piled full of freight shipped out of Kansas City that had been twenty-seven days out of Kansas City. Now, there was no transfer of that freight; it went over the Burlington road the entire distance; but it simply illustrates what the tonnage rule means to the shipper.

Mr. BALDWIN. Now, that freight went in three or four days from Kansas City to St. Francis and the other twenty-three days it had been piled up in the station, and I am explaining that the reason it remained piled up there was because people did not call for it.

Judge Norris says also:

A traveling man told me he sold a merchant at Benkelman (54 miles west of McCook) some flour made in McCook, and in two weeks from that time went into the store and was informed that the flour had not yet arrived.

He did not give any date or name, so that we can not contradict or contest that story directly or categorically. If that incident ever occurred, it was the result of some very unusual condition, and one with which the railroad probably had nothing to do. There is a daily local freight train, Sundays excepted, from McCook to Benkelman, besides extras, and shipments between these places are uniformly handled in twenty-four hours. The agent at Benkelman was asked particularly regarding flour shipments, and to give the name of the party shipping and receiving it and the time it was en route, on five different shipments. His answer was:

One day on shipments from McCook to Benkelman.

Now, the statement of Judge Norris that is said to have made the strongest impression upon the committee was a recital, covering a certain period of thirty days, of the number of times the local freight train on the branch from Orleans to St. Francis was late in reaching St. Francis. You take that, so many hours and so many hours, and you go over that and make quite a list of it, and it looks formidable. He says, "Those are reports I have." We have not any opportunity to specifically verify his statement. The testimony seems to cover two separate periods of several days each when this train was uniformly late. That may have been in the midst of a prolonged blizzard or a spring wash-out. But in any event it is a very misleading statement as to the number of hours the train men were on the road. He says that the train was late in arriving at St. Francis. He does not state when it left Orleans, but it probably left Orleans late.

Now, trainmen are paid from the time they are called, and they would not be called until the trains were about ready to start. Suppose they arrived late at St. Francis. That would not show that any of the men were longer on the road than the regular time.

There is another important feature that Judge Norris did not explain to the committee, and that is that this work is not performed by one train crew, but by two.

Mr. TOWNSEND. Before you get through are you going to tell us whether it is a fact or not that they are overworked?

Mr. BALDWIN. I think I am, sir. I am now examining the evidence that was presented to the committee. That work is not performed by one train crew, as I say, but by two.

Mr. CUSHMAN. Covering a distance of how much?

Mr. BALDWIN. From Orleans to St. Francis that branch is 133 miles long. The first crew starts at Orleans at 7.30 a. m. and takes the train to Atwood, 91 miles, on a schedule of 11 hours.

Mr. RYAN. Is that the division?

Mr. BALDWIN. That is the place where they change the crew. This branch is 133 miles long, and they split up the run. When they reach Atwood another crew takes the train from Atwood to St. Francis, 42 miles, on a schedule of four hours. I am going to file with you an official statement of the actual movement of that train by both crews every day in the month of April, and it shows that the actual time that the men were on duty from Orleans to Atwood was ten hours, and from Atwood to St. Francis the average was a little over two hours. And yet Judge Norris would have the committee infer and believe that they were overworked, and that the train was late at St. Francis. Now, he said that when the men got into St. Francis late they did not go to bed at all, but they simply started right back. Suppose they did. When they reach St. Francis they have had only two or three hours from Atwood, and they have a run of two or three hours back to Atwood, and that would not make them overworked.

The only other specific instance referred to by Judge Norris was that of a certain unnamed fireman who, on the short run of 88 miles between Denver and Brush, claims to have been on duty continuously, shoveling coal, from 3 o'clock in the morning until 9 o'clock at night, which I will admit is a pathetic case. Again he does not give any date, and there is no opportunity for us to explain. It may have happened. It may have been the fireman's own fault if it did happen.

Mr. GAINES. How long was he on duty?

Mr. BALDWIN. From 3 o'clock in the morning to 9 o'clock at night.

Mr. GAINES. How far did he go?

Mr. BALDWIN. Eighty-eight miles. It may have been in the winter time when the train was snowed in. He does not say and does not explain. It is all guesswork. You know how these things happen—a bridge is out, there is a washout, the telegraph fails, the engine breaks down. Forty thousand different things may happen to delay the train and make a man on duty for long hours.

Mr. GAINES. That would be eighteen hours going how many miles?

Mr. BALDWIN. Eighty-eight miles.

Mr. GAINES. He could not have been continuously shoveling coal all that time, evidently. That would be pretty slow progress.

Mr. BALDWIN. Judge Norris says so. He is a member of Congress, and I do not want to dispute his statement. In order to show that this occurrence, if it took place as recited, is not in any sense typical of the service, I will file with the committee this official statement, showing the actual movements of every freight train in both directions between Brush and Denver during April. There was just one trip in that month that consumed nineteen hours, and this was caused by an engine failure that could not be prevented. The average time was much under ten hours. Now, that information is authentic, and I think it is an answer as to whether the train men on that part of the Burlington road who are the constituents of Judge Norris need a Federal statute to protect them from being overworked.

I am going to file with the committee also the rules of the company,

both for the C., B. and Q. lines east of the Missouri River and for the B. and M. in Nebraska, the lines which Judge Norris has particularly criticised. Among these rules, applying to the entire Burlington system, are the following, regarding hours that train men may remain on duty:

TRAIN MEN'S SCHEDULE, RULE 11.

Train men and yard men having been over sixteen hours on continuous duty will, after arrival at terminals, be entitled to eight hours' rest without prejudice——

Mr. ESCH. In that connection, what arrangement have you with your men as to hours of service and hours of rest?

Mr. BALDWIN. I am just reading it. Here are the engineers:

ENGINEERS' SCHEDULE, RULE 48.

Except in cases of emergency, engineers will not be required to remain on duty to exceed sixteen consecutive hours.

Here are the firemen:

FIREMEN'S SCHEDULE, RULE 41.

Except in cases of emergency, firemen will not be required to remain on duty to exceed sixteen consecutive hours.

Now, I want to call your attention to two significant facts in connection with these rules. The first is the recital at the opening of the book of rules, of date November 1, 1905, as follows:

The rules enumerated below constitute in their entirety an agreement between this company and its engineers.

That is signed by the representatives of the engineers and the firemen, all of them on the whole Burlington system. The second fact I want you to notice is that these rules which I have here of the B. and M. were promulgated four years before, and they are identical in language with those which have been recently incorporated into the agreement with the men, and are the same that have been in force on the Burlington road for years.

Mr. CUSHMAN. Let me ask you this right in connection with those rules. A statement was made to me recently by a gentleman in this city—Mr. Fuller, representing the railroad employees—that while rules of that character had been entered into between the railroad company and the employees, yet whenever a railway employee tried to take advantage of those rules—for instance, when he had been at work for sixteen hours or such a matter, whatever period of time under the rules entitled him to a rest, if he was then asked to go out again without receiving this rest, and demurred to that or suggested that he was entitled to a rest, the company usually made it rather uncomfortable for him, and after one or two requests of that kind would get rid of him.

Mr. BALDWIN. Would it be entirely satisfactory if I should ask Mr. Judson to explain that to you?

Mr. CUSHMAN. Certainly.

Mr. BALDWIN. Now, to get through with my comments on Judge Norris's statement. There is an agreement, and signed by the representatives of all the train men on the C., B. and Q. system, embodying

the rules that have prevailed. I want to suggest to you, having in mind the consequence of a violation of these rules, whether the rules prescribed by the company do not provide a stronger safeguard for the men and the public than your proposed legislation on the subject. I say that if the company permits them to be violated after making that agreement the men have the remedy in their own hands.

Mr. RICHARDSON. Have those men complained under that arrangement that you have made with them?

Mr. BALDWIN. No, sir; not that I know of. They seem to have complained to Judge Norris.

Mr. RICHARDSON. You do not know about that?

Mr. BALDWIN. Mr. Judson, of course, can tell you about that. The suggestion that railroad officials are indifferent to the enforcement of this particular rule is not true. I am going to file here copies of the circular letters dated March 14, 1905, and May 8, 1905, by the general manager of the Burlington road to all the superintendents. The first letter mentions the limit of eighteen hours, because that is the limit named in the statutes of some of the States, and if the general rule of that kind was sought to be bettered, the first suggestion was that it should be the maximum. But he speaks of one feature, and I want to ask you to consider that. He says:

> Some men are willing and anxious to turn and make another trip without sufficient rest, and we must be particular to see that they do not.

In a subsequent order he makes it still more emphatic:

> Train men will not only be entitled to eight hours' rest after sixteen hours of continuous duty, but dispatchers on duty will see that they are required to take it.

Mr. CUSHMAN. Right at that point I wanted to ask you another question.

Mr. BALDWIN. Yes.

Mr. CUSHMAN. In the event that there should be reported from this committee any bill limiting the number of hours which men shall work on these trains engaged in interstate commerce, and providing that upon a violation of that there should be a penalty attached for that violation, in your judgment ought that penalty to be limited entirely to the railroad company?

Mr. BALDWIN. Pardon me.

Mr. CUSHMAN. If, for instance, there is reported from this committee a bill providing that no railroad company shall require or permit a man to work over a given number of hours, and prescribing a penalty, ought that penalty to be inflicted upon the railroad company alone, or upon the railroad company and the man who likewise violates the law by working overtime?

Mr. RYAN. That is hardly a fair question for you to answer?

Mr. BALDWIN. You could not make it apply to the man. You could not do it.

Mr. CUSHMAN. I do not know why.

Mr. BALDWIN. Nor I; except that it is not in the nature of things.

Mr. CUSHMAN. If the working over a given number of hours on a train is made unlawful, I do not see why the penalty might not attach to the man who was guilty of it the same as to the company which permitted it.

Mr. RICHARDSON. What do you want to put a punishment on him for when the company can prevent him from going out?

Mr. CUSHMAN. Does it not lie in the power of the men likewise not to go out?

Mr. MANN. Have you finished the discussion of the rules?

Mr. BALDWIN. I did. I want to call your attention to one other suggestion, which has, perhaps, not been submitted to you, that the slightest delay of a train that results in overtime is at the expense of the railroad company. Here is the rule in regard to engineers:

ENGINEERS' SCHEDULE, RULE 7.

Overtime will be paid for all time used to complete a trip in excess of the time required at a rate of speed of 10 miles per hour, when the excess is over thirty minutes, time to be computed from the time engineer is ordered to leave initial terminal until relieved at destination at a designated track.

This says when the excess is over thirty minutes. Now, an engineer on a freight train receives 45 cents an hour for every hour overtime he makes, and every other man in the crew receives overtime.

Mr. ESCH. Is ten hours counted a day?

Mr. BALDWIN. They go by the trip.

Mr. ESCH. What is your limit—100 miles?

Mr. BALDWIN. If you will be willing to let the practical man answer these questions, I would like for him to do so.

Mr. ESCH. Any way, so long as we get it.

Mr. BALDWIN. Every dollar of this overtime payment is a loss to the railroad company. The earnings of the road from freight and passengers are no greater than they would be if every train crew had been able to make its trips without delay or overtime. That payment is the fine which the railroad company pays for permitting its train men to work overtime. It is an incentive, constant and powerful, for the company to devise every possible expedient to prevent its employees being overworked, and I submit it as a general observation whether Congress could not wisely trust enlightened self-interest to work out better results, both for the public and the men, than would probably follow the bills that you now have under consideration.

I would like to read hurriedly an extract from a letter which I received yesterday from Mr. Byram, who has charge of this traffic, which contains a statement which has in it an item of considerable interest to the committee:

The object sought, viz, to reduce the size of freight trains, can not be attained by legislation of this kind, because the men themselves object to it. In the 1905 session of the Nebraska legislature State Senator Wilsey, from Frontier County, which is in the neighborhood of McCook, and, I believe, is part of the district represented by Mr. Norris, introduced a similar bill, "making it unlawful for any railroad to require an employee in train or telegraph service to work more than twelve consecutive hours." When this bill came up for consideration a delegation of railroad employees appeared before the committee in opposition to it, stating that it would work a hardship on them, because if the twelve-hour limit on a trip should be reached even when the train was within a few miles of their homes and families they would not be allowed to proceed without a violation of the law, and would thus be deprived of the opportunity to reach their homes, even though the distance was short and they were quite able physically to proceed to their home terminal. Senator Wilsey explained that he had not been furnished with information that the law would be objectionable to the railroad men themselves, and, having been enlightened on this point, promptly withdrew his request for further consideration of the bill, and it was indefinitely postponed.

The weakness that is pointed out by this delegation of employees would appear in practice to be almost fatal to the success of this measure.

If this restriction should be enacted by Congress, would a train crew be required to tie up at the expiration of twelve hours, or sixteen hours, or to prove that it was a "case of casualty or unavoidable emergency," as stated in the Norris bill, or "casualty occurring after such employee has started on his trip," as stated in the Esch bill? If, rather than risk the fine of a thousand dollars, a train is thus tied up at any station or side track it may have reached, what is to become of the passengers and live stock and other freight in transit? No railroad company could long be operated under such a system without duplicate train crews.

Now, this rule if the company is fair and satisfactory to the men themselves, and a just protection to the public, as I think will be conceded, and I think it will also be conceded that the company itself has the strongest motives of self-interest to enforce its rule.

Now I come to your point, Mr. Cushman, that not always everywhere is the rule enforced, and that other companies have no such rule, and the question is asked, "What harm is going to result from enacting into general law a rule for all railroads, and providing suitable penalties to insure its enforcement?" One sufficient answer, it seems to me, is that under the rule of the company no train would ever be foolishly tied up while en route because the crew had been in continuous service more than sixteen hours. The public has got to be served, and the public must be served by the railroads to the fullest extent possible, and that train will proceed to its destination. There is not one case in a hundred where men are kept on continuous duty more than sixteen hours that did not result from casualty or emergency. When such a violation of the rule occurs, the company has every motive for its quick detection and punishment and the discharge of the offending official. But the case will be different under your Federal statute. Even where it is clear that the delay was the result of an unavoidable emergency, such as an engine failure or spreading of the rails, no official would take the risk of incurring for his company and himself liability to a thousand dollars fine. The question of whether it was an emergency or was unavoidable or not would have to be submitted to a jury. Whenever a crew was worked beyond the sixteen hours for any cause it would be very well known. Now, you provide for a corps of inspectors—an additional lot of spies.

Mr. ESCH. We have them now.

Mr. BALDWIN. It is very likely that the inspectors which the Interstate Commerce Commission is authorized to employ by some of the pending bills would be diligent to institute suits to recover the penalty. They are to be appointed inspectors for that very purpose. Under those circumstances the operating officials could not afford to take the risk of a thousand-dollar fine, and no course would be left open to them except to tie up the train at any station or upon any side track where it chanced to be when the sixteen-hour limit expired. One minute beyond sixteen hours would incur the full penalty the same as ten hours. But if the railroads, rather than incur the losses that would result from such a tie-up policy, adopt the other practice of operating trains through to destination, even when the crews have

more than sixteen hours of continuous service, then this proposed law will undoubtedly provoke a multitude of suits to recover the penalties.

I submit that no measure so full of the possibilities of harm and annoyance and so prolific of lawsuits should be enacted without the most trustworthy and convincing evidence being presented that the railroads of the country do in fact keep their train crews, or dispatchers, or other employees connected with the train service on duty more than sixteen hours for other causes than a casualty or actual emergency.

I have taken up so much of your time that I would like to ask Mr. Judson to answer practical questions for the committee, because I would soon get into an attempt to answer technical questions with which I claim no familiarity. I would like the privilege of inserting in the record as a part of my remarks a dispatch that I received this morning from the vice-president, Mr. Willard, which presents far better than I can the objections to this legislation.

The CHAIRMAN. Very well.

Thereupon, at 12 o'clock m., the committee adjourned, with the understanding that the subcommittee having this matter in charge should continue the hearing at 2 o'clock p. m.

SUBCOMMITTEE OF THE COMMITTEE
ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Friday, May 11, 1906.

The subcommittee met at 2 o'clock p. m., Hon. John J. Esch (chairman) in the chair.

STATEMENT OF MR. H. D. JUDSON, GENERAL SUPERINTENDENT OF THE ILLINOIS DIVISION OF THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY.

Mr. JUDSON. It seems to me, Mr. Chairman and gentlemen, referring to the bills to limit the hours of labor of railroad employees, that the enactment of such legislation is unnecessary. Nobody can be more interested than railraod managers in seeing to it that trainmen do not work beyond a reasonable length of time. Theirs is a selfish interest. Overtime is very expensive. Overtime is something that we get nothing for. The train man and the engine man get just as much pay while the train is standing on a side track as they do for hauling a train, and it earns the company nothing. It literally burns up money, and it seems to me that this self-interest can be depended upon to see to it that this rule, which obtains on the Burlington and, as I believe, on most roads—this sixteen-hour rule—will not be violated; and if this rule were enacted into law, that would be hard and fast in a way. The railroad would be subject to a penalty for technical or for trifling violation, for a violation—an overtime of a few minutes—could be punished as well as one of a few hours, and the law provides that there shall be plaintiffs to see that suits are brought.

I do not believe that the regulation of hours that railroad men can work has anything to do with the tonnage question. I do not believe that one has any connection with the other. I do not believe that the enactment of this law would have the result of reducing or limiting tonnage, as seems to be sought by some. No railroad company can afford to run a train with an engine loaded below what it can fairly and properly handle, and as it is not economical to load an engine beyond that point, I can not see that there is any connection between the two. The Burlington has increased its tonnage considerably, but that is true of all the railroads I know of. It is true of all our competing lines. I do not know that this originated with or is peculiar to Mr. Hill's roads, and if it is, I think it is something that the people ought to hail with delight, because it is something that is going to do them a good deal of good or result in vast benefit to them.

Mr. ESCH. This increase of the tonnage or haul has been rendered possible by increase in the capacity of the locomotive?

Mr. JUDSON. Yes; and increasing the power and strength of our locomotives and increasing the capacity of the cars.

Mr. ESCH. Increasing the capacity of the locomotive implies an increase of the steam power?

Mr. JUDSON. Yes.

Mr. ESCH. That implies an increase of the coal consumption?

Mr. JUDSON. Yes.

Mr. ESCH. That makes the fireman's duties more onerous for the number of hours which he is on the engine?

Mr. JUDSON. Yes; that is true.

Mr. ESCH. Is there any connection between that and the necessity for limiting the hours of labor?

Mr. JUDSON. I was going to say that all the criticism and comment on the Burlington methods relates to a very small percentage of the business. I ask you to bear in mind that over 50 per cent of the freight business on the Burlington is hauled on fast freight trains, on trains that run from 15 to 25 miles an hour; that is considerably over half of it. As to the other half of it, the way-freight trains, of course, there are times when trains are on the road over fifteen hours. That can scarcely be avoided, and it will not be avoided after the law is in effect. We will simply have to accept the consequences, I suppose.

I think you should bear in mind the vast increase in the business of this country, certainly in the territory that the Burlington covers. In some places it has increased over 100 per cent. In order to take care of that vast increase the Burlington road is spending a prodigious sum of money. They have in contemplation this year the expenditure of $5,000,000 in the work of putting in additional side tracks, building new yards, adding to their terminals, water plants, buying more powerful engines, and new and better cars. They are consigning every year hundreds and hundreds of old cars to the scrap heap. I know of one division headquarters where we recently burned at one time over 300 old cars. Now, all this is being done, all this money is being spent, to better the movement of the trains, to make it possible for them to get over the road better, and while I can not see any prospect of the time ever coming when every trip will be made within sixteen hours, I do not believe, when this money is spent and

all these improvements are made, there will be very little cause of complaint; and I ask you to remember, too, that in making these improvements we are met at times with the impossibility of getting labor.

Mr. RICHARDSON. Right in that connection, do you not pay your employees upon the mileage basis?

Mr. JUDSON. Yes; with an overtime allowance.

Mr. RICHARDSON. From that standpoint, when you know that you have got a certain amount of tonnage as traffic and a certain number of miles to transport it, is it not true that it is not any additional expense to you in the matter of the employment of more men, because you pay a certain number of men on the basis of mileage, and if they were required to stop, for instance, at a certain place and another crew take their place, would it increase your expenses in the way of paying the men, at all?

Mr. JUDSON. Yes. Now, if this law is enacted I can see two things that might happen, neither of which would be practical or satisfactory.

Mr. RICHARDSON. You do not get my meaning.

Mr. JUDSON. Yes, sir. I beg your pardon; I do, and I am going to answer it. Either you stop the train where the expiration of sixteen hours has found it and allow the men to rest, which it seems to me would be very unsatisfactory to the patrons—simply almost out of the question—or else you change crews at points short of the terminal, and that would increase the expense of the company. But, laying that aside for a minute——

Mr. RICHARDSON. How would it increase it? I want information, you understand.

Mr. JUDSON. In order to get those men to that point you would have to pay them for going.

Mr. RICHARDSON. You would have to pay the first crew anyhow for going on to the end.

Mr. JUDSON. Yes; but this way you would be paying twice. If a man is lying asleep in a way car, he draws his pay nevertheless. It would be unsatisfactory to the men, because they would be kept away from home vastly more than they are now, and furthermore they would be prohibited from taking that train to the destination frequently when they are in perfect condition to take it, and when they are willing and anxious to take it.

Mr. ESCH. You make the point that the trains might be hung up and the passengers might resent it. Is that possible?

Mr. JUDSON. I beg your pardon; I was not referring to the passenger trains. There is never anything of that kind in regard to passenger trains. I do not see how it could apply to passenger traffic at all.

Mr. ESCH. You were not referring to passenger trains?

Mr. JUDSON. No, sir; I meant freight trains. I was referring to the man who is looking for his freight.

Mr. RICHARDSON. If you have got a thousand miles to transport freight, and you pay your men on a mileage basis, and when a crew has run that train 750 miles the limit of the hours expires and they have to stop and you have got a new crew to put on there, so far as the wages of those men are concerned the railroad is not put to any

additional expense, because they are going to pay for that thousand miles anyway?

Mr. JUDSON. The railroad is put to an additional expense, as I explained to you before, because those men are deadheaded under pay to the point where they would be required to exchange.

Mr. ESCH. You have stated that if this became a law, it would make a hard-and-fast rule. Has your attention been called to the proviso in section 3 of the bill, "That the Interstate Commerce Commission may, by its order, from time to time, upon full hearing and for good cause, reduce the maximum hours of continuous duty or uninterrupted rest specified in section 2 hereof?"

Mr. JUDSON. I read that.

Mr. ESCH. Would not that do away with the feature of a hard-and-fast rule?

Mr. JUDSON. It would involve litigation and it would be incumbent upon the railroad to prove such and such things, would it not?

Mr. ESCH. We have that requirement now in the safety-appliance law and in the rate problem. It is to do no injustice, but to permit a railroad company to go into the court, or rather before the Commission, and present its case fully, and then allow the Commission to adjudicate it. And it seems to me that would introduce that degree of flexibility which would make it acceptable to the railroad companies.

Mr. JUDSON. I can see no way, absolutely no way, to prevent the violation of that rule, frequently—oh, no; not frequently, because the rule is not frequently violated now, but sometimes.

Mr. RYAN. You mean this proposed law?

Mr. JUDSON. Yes.

Mr. RICHARDSON. You do not believe that as a rule men should be worked, as a general proposition, more than sixteen hours?

Mr. JUDSON. Yes, sir; and our rule is now they shall not be required or permitted to do so. Frequently we meet with the condition that men are anxious to work longer than they should.

Mr. RICHARDSON. I understand that. Do you not believe that under your rule when you are undertaking to comply substantially with that, if there was a law enacted, all these little troubles and difficulties you mention would be so regulated that you would conform with the law?

Mr. JUDSON. I can not see it that way now. It seems to me there would be a vast deal of trouble and complication from it. Here is a train that starts to run 100 miles, which is about the average length of a division. We have one division that is 163 miles long and another 157 miles; but they average about 100 miles. We have lots of our fast trains that will make that distance in six and a half to eight and a half hours. As I told you a while ago, 50 per cent of our business is done on fast trains. We have any number of freight trains that will make that run of 163 miles in from six and a half to eight and a half hours. That is the bulk of our business.

Mr. ESCH. So that this law would not be operative on but half of it?

Mr. JUDSON. Yes.

Mr. ESCH. And would not be operative on that half of it?

Mr. JUDSON. No; only on a small percentage of it.

Mr. ESCH. Yes.

Mr. JUDSON. Yes, sir.

Mr. RYAN. What is the average rate of the fast runs?

Mr. JUDSON. Our freight trains make that 163 miles from six and a half to eight and a half hours.

Mr. RYAN. Do they double back then?

Mr. JUDSON. No, sir; they run first in and first out, and follow one another.

Mr. RYAN. About how long do they have at the other end of the division?

Mr. JUDSON. That would depend entirely upon the traffic, but those men who run would have never less than, I think, ten or twelve hours.

Mr. RYAN. That is more than is necessary.

Mr. ESCH. The maximum is only sixteen hours.

Mr. JUDSON. I understood the gentleman to ask me how long would they be laid off before returning.

Mr. ESCH. The rest period?

Mr. JUDSON. Yes.

Mr. ESCH. Your rule is eight hours?

Mr. JUDSON. Yes; but, as a matter of fact, the men get practically more than that. The gentleman asked me about a run on a particular division, which I was describing.

Mr. ESCH. Yes.

Mr. RYAN. The run would be eight and a half hours, say, for your fast freight, and then I wanted to know how soon would those men double back on the other run?

Mr. JUDSON. They would be off never less than ten or twelve hours, and sometimes twenty-four hours.

Mr. RICHARDSON. You say that if this became a law it would not affect more than one-half of your system of railroad?

Mr. JUDSON. I said this, that the criticism was on a small percentage of half of our freight business.

Mr. RICHARDSON. Based on the idea that the men do not work more than seven and a half to eight hours?

Mr. JUDSON. Yes.

Mr. RICHARDSON. It would not apply to those men.

Mr. JUDSON. Of course it would not apply to any place where the law was not violated.

Mr. RICHARDSON. Yes.

Mr. JUDSON. But it seems to me, as an operating man, that the difficulty is to always prevent the violation of that law. Now, we start a train to run 100 miles, and they could make that run in ten hours. If they make it in ten hours, they get no overtime. For every hour or fraction of an hour of overtime they are paid, and we get nothing in return. Now, suppose the engine fails.

Mr. RICHARDSON. Do you not think that the bill provides for that?

Mr. ESCH. "Unavoidable?"

Mr. JUDSON. The engine fails because the fireman is poor, and you say it is the duty of the railroad to have good firemen; but they can not always be had. In one section of my division in the space of a few months we hired over 300 firemen.

Mr. RICHARDSON. Has not the number of firemen vastly increased in the last few years on account of the increase in the size of the locomotives?

Mr. JUDSON. Yes; but it has not increased as much as you would think because of the size of the locomotives. The fireman has not an easy job.

Mr. RYAN. They are practically shoveling coal all the time with these heavy engines?

Mr. JUDSON. Well, they do not have any easy job of it.

Mr. RICHARDSON. The brakeman does not have an easy job, either?

Mr. JUDSON. No.

Mr. RICHARDSON. From everything that I can ascertain it looks to me as though no railroad man has an easy job.

Mr. JUDSON. Yes, sir; that is true.

Mr. RYAN. Take the half of your freight to which this bill would apply; what proportion of hours do those men work without rest on your slow freight, as you call it, on the average?

Mr. JUDSON. I can not answer that except to say that the violation of the sixteen-hour rule is very rare. The overtime is something we are watching just as a cat watches a mouse.

Mr. ESCH. Your road does that; but you can not say the same thing as to all the other systems in the United States?

Mr. JUDSON. As to what?

Mr. ESCH. As to the observance of the sixteen-hour rule and the rest.

Mr. JUDSON. I will say that the rule obtains on most railroads.

Mr. ESCH. We put in the maximum of sixteen hours, which is the maximum on almost every road in the United States. The Southern Pacific and the Santa Fe and, I think, all the others have that, and we put in that maximum, and it would reach all but a small per cent of your operating officers who are applying these rules.

Mr. JUDSON. We are trying to see that that rule is absolutely carried out, as I have explained.

Mr. ESCH. Now, can you state from your own knowledge as to the practice of other systems?

Mr. JUDSON. No; I have no knowledge of them.

Mr. ESCH. If, therefore, this committee gets evidence that other systems are not as rigid in carrying out this rule, is there not some necessity for legislation?

Mr. JUDSON. I have this much knowledge, from correspondence and conversation with other superintendents and managers, and I believe they are all watching it as closely as we are.

Mr. RICHARDSON. Is not your opinion as to the application of the rule on the other roads based on the fact that it is to their interest to enforce it?

Mr. JUDSON. Yes; I think that is the strongest motive.

Mr. RYAN. Approximately, what is the longest number of hours that the men on your road in the train service work? Take a general average.

Mr. JUDSON. All freight trains?

Mr. RYAN. Yes; all the men in the train service.

Mr. JUDSON. I beg your pardon?

Mr. RYAN. Your statement would indicate that it was not over sixteen hours out of twenty-four.

Mr. JUDSON. For very many of the men.

Mr. RYAN. Take the average, about.

Mr. JUDSON. The average would be under sixteen. Of course there are violations of this rule just as there are violations of all laws.

Mr. ESCH. In case of the violation of the rule, how do you discipline your men?

Mr. JUDSON. Well, every case that seems to require discipline is passed upon on its merits. You can not say that such an infraction of the rule shall always be punished in the same way. That is not a rational way to discipline men. What we do with our men depends upon the circumstances and largely upon the record of the man. If a man has a good record through a long term of service he is not going to be disciplined as other men are. We can not lay down any hard-and-fast rule for discipline.

Mr. ESCH. Does that laying down of a different rule for discipline encourage the violation of the rule?

Mr. JUDSON. No, sir. How could you do otherwise? I can remember a time when there was no excuse accepted if a man burned off a journal in a train, and a man was suspended if a journal burned off in his train. Now, we would not discipline them in that way to-day. It is not rational or sensible. We take all the circumstances of the case, and we have to get the record of the man, and we say it is almost always—well, we do not suspend any more at all. We do not think it is right to take a man's wages from him and let him go in idleness.

Mr. ESCH. Have you ever discharged a man for working overtime?

Mr. JUDSON. I do not know whether we ever did.

Mr. RYAN. You are acquainted with the train service in Nebraska?

Mr. JUDSON. No, sir. I am east of the Mississippi River. I will say, however, that the same rules obtain; the same agreements with our men.

Mr. ESCH. For the enlightenment of the committee, I would like to ask you as to the force and effect of the language used in this bill, which would take any given case out of the operation of this law: "*Provided*, That the provisions of this act shall not apply in any case where, by reason of unavoidable or unforeseen train accident or act of God." That would, of course, cover landslides and snowdrifts and bridges washing out and accidents of that character.

Mr. JUDSON. It would; but it would still leave a multitude of little things that might keep the men on the road beyond the limit of hours. They might have a hot box at this point, and a flue leaking at this point, and so a man might be eighteen hours in getting into his terminal.

Mr. ESCH. That would imply that all these accidents happened on one trip.

Mr. JUDSON. That is frequently so. I have investigated numberless trips where it would be this here, and something else here, and still something else over beyond. Now, all together those things keep a man on the road sixteen hours and over.

Mr. CUSHMAN. One delay is sometimes occasioned by two or three different things?

Mr. JUDSON. Yes; and there are frequently three or four or five delays, which make him late on the road.

Mr. CUSHMAN. And the trains are inspected on the road at different points?

Mr. JUDSON. Yes.

Mr. CUSHMAN. And the journals are tested?

Mr. JUDSON. Yes.

Mr. CUSHMAN. And the air is tested?

Mr. JUDSON. Yes.

Mr. WANGER. Do these men return to their homes nightly or do they spend one night away from home and then return?

Mr. JUDSON. Of course they spend the night where it is necessary for the train to take them, and they are not always at home at night, of course. A man makes a trip over this long division I was telling you about, and if he leaves Galesburg in the afternoon and gets to Chicago in the evening if course he will be there the rest of the night, and he is frequently there all night.

Mr. ESCH. Do you do a suburban business in Chicago?

Mr. JUDSON. Yes.

Mr. ESCH. How are the train men worked on the suburban?

Mr. JUDSON. In what respect?

Mr. ESCH. In respect to hours.

Mr. JUDSON. There are no long hours on the suburban. That is about the only answer that I can make on that. No man works long hours on any of the passenger trains.

Mr. MANN. But how would it be about the time between the shifts? The proposition in the bill forbids a man going to work without eight hours of rest.

Mr. JUDSON. It never occurs with a passenger train.

Mr. MANN. How about the suburban business?

Mr. JUDSON. That is passenger business.

Mr. MANN. I think you do not understand.

Mr. JUDSON. Possibly not.

Mr. MANN. Say that a man has a run in the morning in the suburban business.

Mr. JUDSON. Yes.

Mr. MANN. Does he lay off about the noon hour, or in the middle of the day?

Mr. JUDSON. He makes a certain number of trips. The first train out of Chicago, I think, is 6 o'clock in the morning. Now, there are a number of crews in those suburban trains. If it were possible for one man to run them all, he would not exceed the hours of labor.

Mr. MANN. You mean he would not exceed the hours of labor—that is, he would not run continuously for sixteen hours if he ran them all?

Mr. JUDSON. Yes; if he ran them all.

Mr. ESCH. You say if he ran them all?

Mr. JUDSON. Yes. Possibly you are not familiar——

Mr. MANN. I am acquainted with the Chicago business sufficiently to know that there are more trains in the morning and evening than in the middle of the day.

Mr. JUDSON. Yes.

Mr. MANN. And consequently there must be more men working in the morning and evening than in the middle of the day?

Mr. JUDSON. Yes.

Mr. RYAN. And after the theater at night?

Mr. JUDSON. Yes.

Mr. MANN. Now, if a man lays off at 10 o'clock, and you forbid him to go to work in less than eight hours——

Mr. JUDSON. But we do not do it.

Mr. MANN. But we have a bill here that forbids it. That is what it is proposed to make the law.

Mr. JUDSON. But he has not worked a reasonable length of time.

Mr. MANN. This bill does not say that a man must work sixteen hours, but that he shall have eight hours' rest whenever his work ceases.

Mr. JUDSON. I will say to you that in any passenger business the men are never worked sixteen hours.

Mr. MANN. The maximum length of time that a man may be compelled to work is sixteen hours, but we are now speaking of the length of the rest.

Mr. JUDSON. They get all the rest they want and all they require in the passenger business; all that is required or would be required.

Mr. WANGER. Between trains in the middle of the day, do you count that or not count it?

Mr. JUDSON. Counting that.

Mr. MANN. Suppose that a man had eight hours' rest in the middle of the day after working four hours, for instance, how would that operate as to suburban business?

Mr. JUDSON. I think that would be an unreasonable requirement.

Mr. MANN. Why?

Mr. JUDSON. Because there is no reason for his resting eight hours.

Mr. MANN. How would it affect the service?

Mr. JUDSON. It would result in our having to put on more men, more train crews.

Mr. MANN. The great part of the men in the suburban work hours in the morning and in the afternoon, with an intermission between those hours?

Mr. JUDSON. Yes; they do.

Mr. MANN. What proportion of them do that?

Mr. JUDSON. All of them; yes, all of them work in that way.

Mr. CUSHMAN. A part of them one day and a part the next?

Mr. JUDSON. No; they have regular runs.

Mr. CUSHMAN. Regular runs?

Mr. JUDSON. Yes; regular runs. It leaves most of them at home at night, and to their meals.

Mr. MANN. You run trains frequently in the morning in the suburban service?

Mr. JUDSON. Yes.

Mr. MANN. And frequently in the evening?

Mr. JUDSON. Yes.

Mr. MANN. And there is more than forty minutes between them sometimes during the rest of the day?

Mr. JUDSON. The rest of the day they are infrequent; I can not tell you just the time.

Mr. ESCH. The bill uses the words "continuously on duty for sixteen hours."

Mr. RYAN. Such a case as this would not come under it.

Mr. ESCH. If they rest during the noon hour there may be an intermission of four hours. I doubt whether they could be held to be continuously employed.

Mr. MANN. The proposition is that a man can not go back to work without eight hours' rest, that he must rest after working for eight hours.

Mr. ESCH. After working continuously for sixteen hours.

Mr. MANN. I do not think it reads that way.

Mr. ESCH (reading):

To be or to remain on duty for a longer period than sixteen consecutive hours, and whenever any such employee of such common carrier shall have been continuously on duty for sixteen hours, he shall be relieved and not required or permitted again to go on duty until he has had at least ten consecutive hours.

Mr. RICHARDSON. That is "continuously." A man that works eight hours and rests four hours and goes to work again would not fall under the provisions of this bill.

Mr. MANN (reading):

And no such employee who has been relieved from duty after a service of any period less than sixteen hours shall be required or permitted to go on duty again until he has had eight consecutive hours of rest.

Mr. RYAN. What is the average number of hours of employment of the yardman, the switchman?

Mr. JUDSON. The switchman works ten hours.

Mr. RYAN. This would not interfere with the switchmen in any way, then?

Mr. JUDSON. No.

Mr. RICHARDSON. This bill does not apply to them, does it?

Mr. RYAN. No; but they are afraid it would apply to them, and they do not want it to apply to them.

Mr. MANN. It was stated here the other day that under the new management of the Burlington road, and the running of trains based upon the amount of tonnage per train, that caused a good deal of delay and also lengthened the hours of the employees and often resulted in making trains so heavy that the engines were hardly able to pull the trains. What would you say about that? What is the tonnage basis?

Mr. JUDSON. I think I did state concerning that. I do not know just what is meant by a "tonnage basis" except that the tonnage basis means the rating of the engine. They used to say that the engine would haul so many cars, but the car is not the proper unit. We now rate them by tons, and we now say from careful tests that such and such an engine is capable of hauling so many tons on such a portion of the road. That is what we call our tonnage basis.

Mr. MANN. Do you have any rule in running the road that the trains shall not start out until there shall be a certain number of tons to go on each train, being a regular scheduled train?

Mr. JUDSON. No; we have not. As I said a while ago, over 50 per cent of our business is done on fast trains, and the regular trains go anyway, whether they have tonnage or not. We do hold extra trains, which it seems to me is entirely proper. The extras run when there is a train load for them, but the scheduled trains run anyway.

Mr. RYAN. Somewhere about 35 cars to a train?

Mr. JUDSON. More than that. It just depends on the character of the road, and the grade. We have places where you can not haul as much, and places where you can haul 60 cars with just as much ease.

Mr. MANN. Is there any rule about the traction power of the engine in tons?

Mr. JUDSON. That is all involved in what I said about the rate sheets. That is all worked out scientifically, and is given to the yardmaster and trainmaster in this form. It is worked out by the engineers' tests and is given to them to go by. Of course, in making this calculation he figures the traction power of the engine.

Mr. MANN. Would you have any regular percentage?

Mr. JUDSON. I do not know that I understand.

Mr. MANN. Here is an engine with such and such power. Supposing you have the freight that represents in tonnage one-half or one-quarter of that.

Mr. JUDSON. If it is a scheduled train, she has got to go.

Mr. MANN. I am talking about an extra train.

Mr. JUDSON. With all these extra trains it depends on the character of the freight. If it is coarse freight it is held until we get nearly the rating of the engine.

Mr. MANN. There is no regular and definite rule about that?

Mr. JUDSON. No; there can not be. It must depend upon the character of the freight.

Mr. BALDWIN. In this dispatch from Vice-President Willard, which I submitted for the record but which I did not read this morning, he says that in the class of freight experience shows that they are not able to get as much as the rating.

Mr. JUDSON. Sixty-five or 66 per cent, he says.

Mr. BALDWIN. That in practice they are not able to get more than 65 or 66 per cent of the rating of the engine. That is the experience. They are trying to get more. Of course that is where good railroading comes in, to get the full capacity of the engine.

Mr. ESCH. Has this new rule of tonnage tended to delay the speed of trains?

Mr. JUDSON. Oh, perhaps somewhat. Not materially. The lowering of the speed of trains is due to other causes. Perhaps it has had some effect on it. And, as I say, we are spending our money in vast sums now to do away with the things that do delay us, to expedite the movement.

Mr. RICHARDSON. What do you think of extending the penalty to the employees of the roads when they work in excess of the number of hours required by law?

Mr. JUDSON. I have no objection to it. I think it would be very certain that the hours would never be exceeded.

Mr. RICHARDSON. You think what?

Mr. JUDSON. That it would be very certain the hours would never be exceeded.

Mr. RYAN. You think that the responsibility must be placed on the men to bring about that result?

Mr. JUDSON. No; if the law is enacted the railroads will obey it. It will be a hardship to them, but of course they will obey it.

Mr. RICHARDSON. But I understood you to say that you would indorse putting the penalty on the men as well as on the railroad.

Mr. JUDSON. I did not make any such suggestion.

Mr. RICHARDSON. I was just asking your opinion.

Mr. JUDSON. But I say I have no objection to that.

Mr. ESCH. You have an exact record of the men as they go on their runs and when they return?

Mr. JUDSON. Yes.

Mr. ESCH. So that the road has full notice of all the men in its train service?

Mr. JUDSON. Yes.

Mr. ESCH. At all hours of the day and night?

Mr. JUDSON. Of course we keep a record of the men, and that shows on the trip report.

Mr. ESCH. You have a record of the roundhouse and the station house?

Mr. JUDSON. Yes.

Mr. ESCH. Showing the work of the men?

Mr. JUDSON. Showing the time they are called and when they are relieved.

Mr. ESCH. So that you have a record of the time that a man goes out in excess of the time specified by law?

Mr. JUDSON. Yes. They would not be called before the time.

Mr. MANN. Do you ever send men out after they have already been in continuous service for sixteen hours?

Mr. JUDSON. Do we ever send them out?

Mr. MANN. Send them out?

Mr. JUDSON. Our rule is not to send them out until they have had the eight hours' rest.

Mr. MANN. I am familiar with the rule, but do you ever do it?

Mr. JUDSON. I do not know if we do.

Mr. MANN. Do you know whether or not you do?

Mr. JUDSON. I have never had my attention called to a case of that kind.

Mr. MANN. How could it be required that a railroad would comply with the law and not send a man out on a new train after he had been in continuous service for the specified time?

Mr. JUDSON. I do not think that would be very burdensome. I think the burden would come in this way: Here is a train on the road, and the sixteen hours are up, and you are 20 or 25 miles from your terminal. How will you provide for that? Something, one or two or three or four things, none of which is an act of God, has delayed that train. The train is delayed and is not going to get to the terminal in the sixteen hours. Now, you will either stop the train right there, and hold it away from its terminal and away from its connections at the junction point, which will upset your schedules over hundreds of miles of territory, and disappoint and displease your patrons, or else you must have men to put on that train, and how will you get them there?

The CHAIRMAN. Suppose we provide that it shall not apply in case of an unforeseen emergency, and then provide——

Mr. JUDSON. Unforeseen emergency?

Mr. WANGER. Unforeseen causes.

Mr. JUDSON. Unforeseen causes? That covers almost everything.

Mr. WANGER. "Unforeseen emergencies" ought to cover almost everything, but it would not cover the intention of sending out men without the prescribed rest.

Mr. JUDSON. We never have an intention of doing so.

Mr. WANGER. We have had cases of that kind presented to us.

Mr. JUDSON. I want to say that that applies everywhere, so far as I know. Of course of my own personal knowledge I refer only to my own territory.

Mr. WANGER. I suppose that is the case on your road?

Mr. JUDSON. I think if that provision were made it would cover everything.

Mr. RICHARDSON. If that provision were made as to unforeseen emergencies, then you all would arrange your own circumstances so that you could comply with it?

Mr. JUDSON. It is almost impossible to provide for all emergencies.

Mr. ESCH. The twenty-eight-hour law regarding the shipment of cattle, which provides for anything beyond the twenty-eight-hour period, contains the provision, "unless prevented by storm or other accidental causes." Do you think that language would be sufficiently flexible to cover these exigencies?

Mr. JUDSON. That ought to cover almost everything. As I have explained to you, trains are delayed from various causes. They have a little delay here and a little more there, and it gradually piles up. It is not any one thing that keeps the train on the road beyond sixteen hours; it is a half a dozen things.

Mr. ESCH. As a rule it is one accident that causes delay; is not that true?

Mr. JUDSON. No, sir; that is not true. One accident would cause the delay, or a half a dozen little incidents would cause the delay.

Mr. ESCH. That would indicate negligence at the inspection point?

Mr. JUDSON. Not always.

Mr. ESCH. Can you not always tell whether there is oil enough in a journal box?

Mr. JUDSON. Yes; but you can not always tell the condition of the waste.

Mr. ESCH. You can tell whether it is hot or not?

Mr. JUDSON. Yes; you can tell whether it is hot or not; but I have known of innumerable cases of trains being looked over and tested where, nevertheless, we had a hot box within 15 miles.

Mr. WANGER. You say within 15 miles?

Mr. JUDSON. Yes; 15 miles.

Mr. MANN. When I came east a short time ago, they got a hot box on one axle three times, and they changed whatever you put in it——

Mr. ESCH. The Babbitt metal?

Mr. MANN. No; what you put in the box. They changed it and packed the box three times. They said they did not know what was the matter.

Mr. RICHARDSON. Is it not a fact that there are accidents and delays caused on railroad trains, resulting from the machinery, that are caused by defects which by all the care of inspection could not have been detected?

Mr. JUDSON. Yes.

Mr. RICHARDSON. That is what you mean by these casualties and accidents you are afraid of?

Mr. JUDSON. No, sir; I mean incidents, not accidents.

Mr. RICHARDSON. Yes; and incidents.

Mr. JUDSON. A man starts to run a hundred miles with a train that is not overloaded, and there is no apparent reason why he can

not make that distance in his time. Something happens to another train that delays him a half an hour; he gets a hot box on his own train; he gets another one. I have seen a half a dozen hot boxes on the same train.

Mr. MANN. Those would all be accidents, under the language that Mr. Esch suggests.

Mr. JUDSON. Would they? Altogether they go to make up a number of incidents which cause a delay.

Mr. MANN. All these things would keep that train out.

Mr. JUDSON. What would you do with an engine weakening? No defect in the machinery, but she weakens. She has cooled and her flues are leaking.

Mr. MANN. That is something that you can not foresee?

Mr. JUDSON. Yes. You might say that we might have better boiler work in the shop, but there you have the fact.

Mr. RICHARDSON. Your idea is that no law can provide for all these little incidents and accidents?

Mr. JUDSON. Yes, sir; I say after you enact this law trains will still be delayed, and we will have to take the consequences.

Mr. RICHARDSON. What could you suggest to the committee that would provide for these accidents and delays which cause you to oppose the enactment of the law?

Mr. JUDSON. I should not like to suggest the language of a law. I believe our rule, with the self-interest that enforces it, is the best guaranty that the men are not going to be overworked.

Mr. MANN. What do you require where a train is delayed—what kind of a report or excuse from the conductor?

Mr. JUDSON. We have a report that shows every delay and the cause of it, in that 100-mile run, or 125-mile run, as the case may be. That report may show one or half a dozen, or it may show twenty delays; but it shows the exact point where each delay occurred, and the exact cause of it, and that is turned in with his trip report.

Mr. MANN. The conductor makes that report?

Mr. JUDSON. The conductor makes that report; yes, sir.

Mr. MANN. Does the engineer make any report?

Mr. JUDSON. Nothing unless there is something the matter with the engine. If it is something the matter with the engine, or the engine is at fault, then he signs the report.

Mr. MANN. He signs the report with the conductor?

Mr. JUDSON. Yes. If anything happens to the engine we do not take the word of the conductor for it.

Mr. MANN. To whom is the report made?

Mr. JUDSON. The report is on a blank, and is turned in regularly with the trip report to the train master.

Mr. MANN. So that in case the delay is caused by any of the incidents or accidents you have referred to, your notice of them comes through the reports of the train man himself?

Mr. JUDSON. Yes.

Mr. MANN. And if he reports that there has something unforeseen arisen, you would be protected under this law, if you provide for that in the law.

Mr. WANGER. Suppose a case like this: The train leaves a place 50 miles or so out of Chicago, a freight train, and runs into the city,

and the men have several hours for rest there, and then that engineer takes that train back. Now, through a series of these accidents, the train is late in getting into Chicago, which does not give the usual, customary rest in that city; but the men have not been on for sixteen hours, and they are anxious to get back again to their own town, and the company is desirous of sending back the train, in order to make the regular run, and you do not have another crew. Would not the crew be permitted to take that train back, although it would be considerably more than sixteen hours before they reached the final terminal?

Mr. JUDSON. No; under our rule we do not permit that. We keep extra crews for that purpose in Chicago.

Mr. WANGER. I am very glad to know that.

Mr. RYAN. In the case of telegraph operators, what hours do they work, usually?

Mr. JUDSON. Telegraph operators in the country work twelve hours. Train dispatchers work eight hours.

Mr. RYAN. Suppose one of those telegraph operators should make an arrangement with the man who succeeds him; could that arrangement be made and could he remain there in the other man's place without the officials knowing it? Is that frequently done, do you know?

Mr. JUDSON. I do not know that it is. We would discipline a man very severely for doing it. I could not say that it is never done.

Mr. RYAN. Could he not have some sign to indicate who the person is to the train dispatcher?

Mr. JUDSON. Yes; imitating the call.

Mr. MANN. You can not tell by the click of the instrument whether it is one man or another.

Mr. JUDSON. No; but they have a call. They are required to sign their messages.

Mr. RYAN. You require a telegraph operator to be relieved every ten hours?

Mr. JUDSON. Yes.

Mr. RYAN. But there is no means of knowing whether it is done or not?

Mr. JUDSON. Yes; we do know in a general way. What I meant to say in answer to your question was that a man might arrange with another to work for him four or five or twelve hours, and we might possibly not know it. I think that is what occurred in Colorado recently.

Mr. RYAN. Yes.

Mr. BALDWIN. Under that bill, if that thing should happen, how could the company avoid the liability of this thousand-dollar fine?

Mr. MANN. If the company did not know it I do not think they would be liable to the fine.

Mr. RYAN. No.

Mr. MANN. Do you have any runs where the runs are short and where they go out for a few hours and lay over for a few hours at the end and then come back for a few hours, so that the total number of hours of labor for a day do not exceed ten or twelve, and yet there is a little rest in between?

Mr. JUDSON. We have not any runs of that kind except on the suburban service.

Mr. MANN. Do you have any passenger runs of that kind?
Mr. JUDSON. No, sir; except in the surburban service.
Mr. MANN. You do not have any in Illinois?
Mr. JUDSON. No.
Mr. MANN. There was one instanced to us this morning, I thought.
(Adjourned.)

EXHIBIT A.

Statement showing movement of freight train No. 177 from Orleans to St. Francis during month of April, 1906.

This train is operated by two crews, one crew handling train from Orleans to Atwood, 91 miles, where it is taken by a relief crew, which handles the train from Atwood to St. Francis, a distance of 42 miles.

Date.	Left Orleans.	Arrived Atwood.	Time consumed.	Left Atwood.	Arrived St. Francis.	Time consumed.
			Hrs. mins.			*Hrs. mins.*
2	8.50 p. m.	11.40 p. m.	14 50	1.05 a. m.	4.30 a. m.	3 25
3	10.15 a. m	8.20 p. m.	10 05	8.45 p. m.	12.20 a. m.	3 35
4	8 a. m	6.30 p. m	10 30	7.20 p. m.	9.40 p. m.	2 20
5	11.05 a. m.	7.35 p. m.	8 20	8.40 p. m.	11.10 p. m.	2 30
6	10.40 a. m.	12.30 a. m.	13 50	1 a. m.	6.10 a. m.	5 10
7	9.05 a. m.	11.40 p. m.	14 35	12.20 a. m.	3.15 a. m.	2 55
9	7.40 a. m.	11.30 p. m.	15 50	1 a. m.	3.45 a. m.	2 45
10	7.30 a. m.	4.30 p. m.	9 0	9.27 p. m.	11.40 p. m.	2 13
11	10.35 a. m.	9.20 p. m.	10 45	11.10 p. m.	3.20 a. m.	4 10
12	11.40 a. m.	12.45 a. m	13 5	2.40 a. m.	5.45 a. m.	3 5
13	7.35 a. m.	5.30 p. m.	9 55	6.30 p. m.	9.20 p. m.	2 50
14	9.40 a. m.	10 p. m.	12 20	10.40 p. m.	12.45 a. m.	2 5
16	9.43 a. m.	9.35 p. m.	11 52	11.30 p. m.	2.10 a. m.	2 40
17	9 a. m.	12.20 a. m.	15 20	1.55 a. m.	5.10 a. m.	3 15
18	10.05 a. m.	5.35 p. m.	7 30	6 p. m.	8.05 p. m.	2 5
19	10.45 a. m.	1.30 a. m.	14 45	3.20 a. m.	6.10 a. m.	2 50
20	7.55 a. m.	8.45 p. m.	12 50	9.50 p. m.	1 a. m.	3 10
21	7.45 a. m.	4.10 p. m.	8 25	5.15 p. m.	7.15 p. m.	2 0
23	9.30 a. m.	2 a. m.	16 30	3.45 a. m.	6.30 a. m.	2 45
24	2 p. m.	1.40 p. m.	23 40	4.35 p. m.	7.30 p. m.	2 55
25	8.15 a. m.	3.35 p. m.	7 20			
27	10.55 a. m.	1.20 a. m.	14 25	2.30 a. m.	4.40 a. m.	2 10
28	9.40 a. m.	8.35 p. m.	10 55	9.45 p. m.	11.55 p. m.	2 10
30	8.30 a. m.	11.25 p. m.	13 55	1.20 a. m.	3.25 a. m.	2 5

OFFICE OF GENERAL SUPERINTENDENT,
Lincoln, Nebr., May 3, 1906.

EXHIBIT B.

Statement showing time made by Sterling Division freight trains between Brush and Denver, month of April, 1906.

Date.	Train.	Left Brush.	Left Denver.	Arrive Denver.	Arrive Brush.	Time consumed.
						h. m.
1	2/76		5.40 p. m		10.50 p. m	5 10
	Ex. 3112	10.20 a. m		11.05 p. m		12 45
2	2/76		5.45 p. m		4.10 a. m	10 35
	Ex. 3102	9.25 a. m		7.15 p. m		9 50
3	2/76		5.40 p. m		4.00 a. m	10 20
	Ex. 1961	5.30 a. m		10.15 a. m		4 45
4	2/76		6.40 p. m		3.30 a. m	8 50
	Ex. 1751	8.00 a. m		6.45 p. m		10 45
5	2/76		7.00 p. m		4.50 a. m	9 50
	Ex. 3112	10.00 a. m		11.50 p. m		13 50

Statement showing time made by Sterling Division freight trains between Brush and Denver, month of April, 1906—Continued.

Date.	Train.	Left Brush.	Left Denver.	Arrive Denver.	Arrive Brush.	Time consumed.
						h. m.
6	1/76		5.40 p. m		1.45 a. m	8 5
	Ex. 2019	1.40 a. m		6.35 p. m		4 55
7	2/76		7.00 p. m		4.15 a. m	9 15
	Ex. 1755	11.16 a. m		12.15 a. m		12 59
8	2/76		6.45 p. m		11,00 p. m	4 15
	Ex. 3101	8.35 p. m		5.35 a. m		9 0
9	2/76		6.45 p. m		1.35 a. m	6 50
10	1/76		5.30 p. m		10.50 p. m	5 20
	Ex. 3102	1.40 a. m		6.40 a. m		5 0
11	2/76		6.45 p. m		12.30 a. m	5 45
	Ex. 3113	11.20 a. m		4.40 p. m		5 20
	Ex. 1757	1.15 p. m		11.45 p. m		10 30
12	2/76		7.00 p. m		2.15 a. m	7 15
	Ex. 3106	6.52 a. m		3.50 p. m		8 58
13	2/76		6.30 p. m		3.25 a. m	8 55
	Ex. 2109	9.10 a. m		8.30 p. m		11 20
14	2/76		6.45 p. m		2.20 a. m	7 35
15	2/76		6.45 p. m		11.45 p. m	5 0
	Ex. 3164	3.00 a. m		11.20 a. m		8 20
16	76		5.40 p. m		11.50 p. m	6 10
	Ex. 3106	12.10 a. m		8.20 a. m		8 10
17	2.76		5.50 p. m		1.25 a. m	7 35
	Ex. 1964	3.25 a. m		7.50 a. m		4 25
18	2/76		6.45 p. m		12.50 a. m	6 5
	Ex. 3110	6.50 a. m		1.45 p. m		6 55
18	2/76		6.55 p. m		1.30 a. m	6 35
	Ex. 1757	3.40 p. m		1.15 a. m		9 35
20	2/76		6.45 p. m		1.00 a. m	6 15
	Ex. 3112	1.30 a. m		10.10 a. m		8 40
21	2/76	6	6.25 p. m		1.15 a. m	6 50
	Ex. 3164	1.50 a. m		9.10 a. m		7 20
	Ex. 3101	8.35 p. m		7.00 a. m		10 25
22	2/76		7.30 p. m		2.45 a. m	7 15
	Ex. 3111	9.35 p. m		6.45 a. m		9 10
23	2/76		5.50 p. m		1.00 a. m	7 10
	Ex. 1761	1.15 a. m		9.30 a. m		8 30
24	2/76		6.45 p. m		1.10 a. m	6 25
	Ex. 3112	6.50 a. m		12.55 p. m		6 5
25	2/76		6 35 p. m		2.45 a. m	8 10
	Ex. 3176	11.30 a. m		7.05 a. m		19 35
26	1/76		6.00 p. m		1.20 a. m	7 20
	Ex. 3111	3.40 a. m		1.10 p. m		9 30
27	2/76		6.45 p. m		12.45 a. m	6 0
	Ex. 2019	2.10 a. m		10.40 a. m		8 30
28	2/76		5.40 p. m		12.50 a. m	7 10
	Ex. 3176	3.40 a. m		4.40 p. m		13 0
	Ex. 3111	7.30 p. m		4.15 a. m		8 45
29	2/76		6.45 p m		10.45 p. m	4 0
	Ex. 3106	8.40 p. m		6.40 a. m		10 0
30	2/76		6.45 p. m		4.30 a. m	9 45

OFFICE OF GENERAL SUPERINTENDENT,
Lincoln, Nebr., May 3, 1906.

CHICAGO, *March 14, 1905.*

Mr. H. D. JUDSON,
General Superintendent, Chicago.
Mr. H. C. NUTT,
General Superintendent, Burlington.
Mr. HENRY MILLER,
General Superintendent, St. Louis.

DEAR SIRS: We want to get out definite instructions in the matter of train men being long hours on the road. I think we shall want to make the limit eighteen hours; that is, after eighteen hours' continuous service, except under extraordinary conditions, such as wrecks, washouts, etc., the man shall be given at least eight hours of rest, and more if asked for.

Of course we want, as far as possible, to make at least an average speed of 10 miles per hour across every freight district that is 100 or more miles long.

Where the mileage is less than that, if we have to pay for a hundred miles, if we can get more work done by using ten hours that is what we want to do.

I wish you would draft and send me a rule that would cover this matter. The point I have in mind is that after eighteen hours of continuous service the company's officers must see that the men have rest, even to the extent of tying up between terminals. It is hardly likely that a train of live stock or merchandise freight will ever be on the road this number of hours.

I should like to have you suggest also the best method of keeping check on the individual crews and men, so that the dispatcher will have it within his control to avoid letting men go out or ordering them out after a trip until they have had proper rest. Some men are willing and anxious to turn and make another trip without sufficient rest, and we must be particular to see that they do not.

I shall be glad to hear from you promptly.

Yours, truly,

J. M. GRUBER.

CHICAGO, *May 8, 1905.*

Mr. H. C. NUTT,
General Superintendent, St. Louis.
Mr. G. T. ROSS,
General Superintendent, Burlington.
Mr. H. D. JUDSON,
General Superintendent, Chicago.

GENTLEMEN: In reference to time of duty of train and engine men, please see that instructions are issued to observe the following rule hereafter:

Except in cases of emergency, such as wrecks, washouts, etc., train and engine men will not only be entitled to eight hours' rest after sixteen hours' continuous duty, but dispatchers on duty will see that they are required to take it, nor will they permit them to be called for a return trip after arrival at a terminal if the probable additional time of duty would make the total time exceed sixteen hours without rest. Where State laws cover other employees, or prescribe differently in any respect, such State laws must be respected.

Acknowledge receipt and advise if understood.

Yours, truly,

J. M. GRUBER.

WASHINGTON, D. C., *May 9, 1906.*

Hon. WILLIAM P. HEPBURN,
Chairman Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.

DEAR SIR: Since appearing before your committee on behalf of the Delaware and Hudson Company, on May 4, 1906, with relation to the bills to limit the hours of service of railroad employees (H. R. 4438, H. R. 16676, H. R. 18671, and H. R. 18961), I have obtained from our operating officers certain information concerning the practical consequences which the proposed measure would have. It seems to me that it is desirable that this information should be before your committee, and I respectfully request that you will accept this letter as a part of my statement.

The great bulk of the traffic of the Delaware and Hudson Company originates either at Binghamton, N. Y., or Carbondale, Pa., and is carried either to Albany, Mechanicsville, or Mohawk, N. Y. Carbondale is the point at which the anthracite coal traffic of the company is gathered for transportation to delivering points and Binghamton is the point of connection with the Delaware, Lackawanna and Western and Erie railways, which, together with the lines of the Delaware and Hudson and its eastern connections, form through routes for traffic originating in the West and destined to points in the State of New York and in New England. At Mohawk the Delaware and Hudson connects with the New York Central, at Albany with the Boston and Albany, and at Mechanicsville with the Boston and Maine. From Albany traffic is also distributed via the Hudson River. Oneonta is a division point on the main line of the Delaware and Hudson, 61 miles northeast of Binghamton and 94 miles northeast of Carbondale. It is 82 miles southwest of Albany, 71 miles southwest of Mohawk, and 87 miles southwest of Mechanicsville. The ordinary runs of train crews in the freight service are arranged with reference to these points. Crews from

Binghamton to Oneonta, 61 miles, make the return trip immediately. The same is true from Oneonta to Albany, Oneonta to Mohawk, and Oneonta to Mechanicsville. The only run which is made in but one direction is that from Carbondale to Oneonta, 94 miles.

The train men employed by the Delaware and Hudson are, with very few exceptions, paid on the mileage basis, receiving 100 miles pay for a day's work and being paid for 10 miles for every hour which they are on duty in excess of eleven hours.

The run from Carbondale to Oneonta, 94 miles, is, as I have said, the only one which is not commonly doubled within a day. On this run the men are obliged to lay off after running the 94 miles, which distance is often made in seven or eight hours, and commonly in from ten to eleven hours. The attitude of the men is fully shown by the fact that this is the least popular run on the road; preference on the part of train men is unanimous in favor of any of the other runs. This is because they feel that it is a hardship to be required to lay over away from home, not only on account of the extra expense to them which it involves, but because in other respects they are necessarily deprived of the comforts to which they are entitled during the hours that they do not devote to labor. Although this run is frequently made in from seven to eight hours, the enactment of H. R. 18951 would make it absolutely illegal to permit these men to start for their homes until they had had at least ten hours of idleness. This would practically require them, in order to obtain any proper rest whatever, to maintain adequate quarters for rest at both ends of the division. The men very much prefer to make the return run after a briefer interval of rest. It should be said that for this run of 94 miles the men are paid for 100 miles.

The "turn" run from Binghamton to Oneonta, 122 miles, is commonly made within sixteen hours. The other "turn" runs of the company require slightly more. The men are allowed seventeen hours and twenty-four minutes for the double run Oneonta to Albany and return, 164 miles; they are allowed fifteen hours and twelve minutes for the double run Oneonta to Mohawk and return, 142 miles, and they are allowed eighteen hours and twenty-four minutes for the double run Oneonta to Mechanicsville and return, 174 miles. The only way that these runs could so certainly be brought within a maximum of sixteen hours as to protect the company from danger of occasionally violating the terms of such a law as that proposed would be to make them all single runs. In other words, after running any of these distances the men would have to be required to take a ten hours' lay off involving, as it would, putting them to the expense and discomfort of providing themselves with quarters in which to spend idle time away from their homes.

I have already in this letter called your attention to the fact that under its contracts with its employees this company pays for 100 miles for each day's labor—that is, on the 94-mile run from Carbondale to Oneonta there is an addition of constructive mileage for which the men are paid, amounting to 6 miles. Now, if the other runs, which at present are doubled, were made single runs each of them would have to be paid for as for 100 miles. Thus to the 61 actual miles from Binghamton to Oneonta would be added 39 constructive miles, or 64 per cent; to the 82 actual miles from Oneonta to Albany would be added 18 constructive miles, or 22 per cent; to the 71 actual miles from Oneonta to Mohawk would be added 29 constructive miles, or 41 per cent, and to the 87 actual miles from Oneonta to Mechanicsville would be added 13 constructive miles, or 15 per cent. The labor expense of conducting the business of the company would be increased by these proportions. It is to be observed that while this would be the result to the company the accompanying consequence to the employees now in its service would be a reduction of earnings, while at the same time they would be put to additional expense. For example, in another part of the system than that on which traffic is most dense, which has been discussed above, this company has a run from Albany to Whitehall, a distance of 80 miles, which is commonly doubled within the day. While under favorable conditions this can be done in sixteen hours, if the proposed law were adopted, this company, for its own protection, would be obliged to make it a single run. For the 160 miles, at present, an engineer receives $6.56. If he were only permitted to run 80 miles he would be paid for 100 miles, but would only receive $4.10, out of which he would have to expend at least 75 cents for the extra cost of board and lodging during his lay off away from home. Thus, while the company would be forced to pay $8.20 for what it now obtains for $6.56, an increase of 25 per cent, the individual employee would really be considerably damaged.

In order to keep the men fully employed and the freight moving under the conditions that would be imposed by the enactment of any of the measures under discussion this company would be compelled largely to increase its locomotive equipment. It would also have to provide additional terminal facilities and in many other ways the adjustment to the radically new methods demanded to meet the legislation would entail upon the company large expenditures. Beyond this it is certain that if the railways of the United States were compelled immediately to adjust themselves to such a law as that proposed they would find it impossible, at short notice, to obtain the additional equipment and facilities which it would require. The consequent interference with traffic movement and the injury to the business interests of the country it is quite impossible to estimate. Traffic congestion and general disorganization and demoralization of the service would be certain to be the immediate result. Certainly if Congress is to impose this burden upon the railway business of the country, it ought not to do so without ample warning and full opportunity to comply with the conditions of the law.

I am, Mr. Chairman, with great respect,

Very truly, yours,

H. T. NEWCOMB,

Counsel for the Delaware and Hudson Company.

HEARING

BEFORE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES

MAY 22, 1906

ON THE BILLS

H. R. 4438, H. R. 16676, and H. R. 18671,

TO LIMIT THE HOURS OF SERVICE
OF RAILROAD EMPLOYEES

WASHINGTON
GOVERNMENT PRINTING OFFICE
1906

H. R. 4438, 16676, AND 18671.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Tuesday, May 22, 1906.

The committee met this day at 10.40 o'clock a. m., Hon. William P. Hepburn in the chair.

Mr. ESCH. When we adjourned the other day, Mr. Chairman, we were on the latter portion of section 1 of the bill H. R. 18671, "to promote the safety of employees and travelers on railroads by limiting the hours of service of employees therein," and the question arose as to the striking out of the words "or train service," on line 6 of page 2, the subcommittee having recommended it.

The CHAIRMAN. I suppose we will consider that at the conclusion of the hearings.

Mr. ESCH. If there is no objection, we might get some light upon that from Mr. Fuller by asking him some questions only on this feature.

Mr. MANN. And I want to ask him some questions on something else afterwards.

The CHAIRMAN. Mr. Fuller, we will hear you.

STATEMENT OF MR. H. R. FULLER, LEGISLATIVE REPRESENTATIVE OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, TRAINMEN, AND FIREMEN.

Mr. FULLER. Mr. Chairman and gentlemen of the committee, I see by the statement of Mr. Esch that the committee has taken as the basis for this legislation House bill 18671. I want to say to the committee, with due deference to those who desired that bill introduced and with due deference to the committee's consideration of it, that it does not represent the views of the men whom I represent. Our views are expressed in House bill 18961. A great many criticisms from our standpoint can be made of bill 18671.

Mr. RICHARDSON. What is the difference between the one you assented to, 18961, and the other one?

Mr. FULLER. I will be glad to tell the committee. In the first place, as I stated before the committee, we were opposed to anything that savored of penalizing the men if they happened to work extra hours.

The CHAIRMAN. What objection is there to that, Mr. Fuller?

Mr. FULLER. I wanted to say that on page 1, line 4, of this bill, 18671——

Mr. ESCH. There is no bill so far that penalizes the men.

Mr. FULLER. Yes; but I wanted to say this: There is an effort, I understand, on foot to amend the bill in that way.

The CHAIRMAN. Let me ask you, Mr. Fuller: It is said that one of the necessities for the enactment of this bill is that railroads impose upon the men. They recognize the fact that if they do not go when they are desired to go, they will in some way be ostracized and hurt. Now, is it not true if there was a provision of this kind, making it an offense for them to go out and violate the law, the company could not with any kind of decency insist upon their going, and it would strengthen them in their position?

Mr. FULLER. I answered that before. It appears in the hearings. I wanted to confine myself to the criticisms of this bill. It says here, "That the provisions of this act shall apply to every common carrier or carriers, their officers, agents, and employees." Now, in the event this amendment is not put in, it is a question whether, in my mind, the words "and employees" can not be construed also to apply to them, so far as the penal provision is concerned.

There is a lot of matter in section 1 of this bill that we think is entirely unnecessary. It says, "The term 'railroad' as used in this act shall include all bridges and ferries used or operated in connection with any railroad." The question of employees employed upon that particular part of the line does not come into this discussion, because those people on bridges and ferries are not worked excessive hours. We would rather have the bill as brief as possible and to the point.

Now, on page 2, line 3, it says: "And the term 'employees' as used in this act shall include conductors, brakemen, engineers, firemen, train dispatchers, telegraph operators, or other persons actually engaged in train operation or train service, and notwithstanding that the cars on or in which they are employed may be held and operated by the carrier under lease or other contract."

Now, as to cars being leased or operated under contract, it is all unnecessary. The courts have held, in construing the safety-appliance act, that the carrier who is operating the car is responsible for it at that time.

Another thing, we object to naming the employees, for two reasons. The first reason is that it is a very easy matter for a railroad company to evade the law by changing the term used to designate the employee. For instance, a brakeman is often now called a train man, and if we attempted to name the employees we have got to put in the name "porter," because there are a number of large lines in the country—I have in mind particularly the Santa Fe—which dispensed with the services of the forward brakeman on the passenger trains, and they now have what they call a "porter" doing that work.

If we apply the names we will have to cover that fellow, and if we use the word "porter" we will either have to use extra language to define it or will include those porters employed on Pullman cars who have nothing to do with the operation of a train; and we would rather, as expressed in our bill, have the provisions apply to "any employee engaged in or connected with the movement of any train in which such commerce is hauled." That confines it directly to the movement of the train.

Mr. BARTLETT. Where is that?

Mr. FULLER. That is on page 2 of House bill 18961, lines 1 and 2.

Mr. RICHARDSON. Read that over again.

Mr. FULLER (reads): "Any employee engaged in or connected with the movement of any train in which such commerce is hauled." That confines the operation of the bill specifically to those who are directly engaged in the train movement, and there can be no question about it. A porter on a sleeping car has nothing whatever to do with the movement of a train.

Mr. RICHARDSON. What is the difference between the language you use and "train service?"

Mr. CUSHMAN. Read that language over again, Mr. Fuller.

Mr. FULLER. It begins at the bottom of page 1: "Any employee engaged in or connected with the movement of any train in which such commerce is hauled."

Mr. RICHARDSON. Now, tell me the difference between that and "train service."

Mr. FULLER. It would be easier to construe the words "train service" to cover a porter on a Pullman car, because he is actually on the train and engaged there, but not in the movement of the train.

Mr. CUSHMAN. Would not that language be broad enough to cover switchman, connected with the movement of any train?

Mr. FULLER. Switchmen are not train men. Their work is not that of the movement of trains. The word "train" was never better defined than the vice-president of the Southern Railway defined it a few years ago upon being questioned by the chairman of this committee. He said it was a train after it was made up in the yard and got out under the dispatcher's control. That is a train.

Mr. CUSHMAN. The bill you propose does not mention train men at all?

Mr. FULLER. Switchmen are not connected with the movement of the train.

Mr. RYAN. If they make up the train in the yard they are?

Mr. FULLER. It is not a train within the meaning of the standard rules in operation upon the railroad until there is somebody in charge of it, an engineer and conductor, and they get their orders and the engine is attached upon one end of it and green flags attached to the other end. Another train, for instance, could not come along and run by that train if there were green markers on the rear end and no engine on the other end, and if it was going the other way and there was no engine attached it could not go on. The train is not represented until it has an engine on one end and green flags on the other end.

Mr. MANN. Is not a man connected with the movement of the train who will have to throw a switch to determine which track it shall run on?

Mr. FULLER. I think so.

Mr. MANN. Suppose you have a station agent where there is a very small amount of business and few trains, and that station agent watches the trains for twenty-four hours nominally, but actually works only three or four hours a day?

Mr. FULLER. As to actual switching service it would not apply, but it would apply to such a person.

Mr. RICHARDSON. It would apply to the man with the flag, telling trains to go on?

Mr. FULLER. Yes, sir.

Mr. RYAN. Including telegraph operators?

Mr. FULLER. Yes; I think so.

Mr. GAINES. A train dispatcher is connected with the movement of a train?

Mr. FULLER. Yes; he undoubtedly is. As I say, a lot of that language can be cut out.

In section 2 of H. R. 18671 there is a provision which says, again—

> And no such employee who has been relieved from duty after a service of any period less than sixteen hours shall be required or permitted to go on duty again until he has had eight consecutive hours of rest.

Now, our bill makes a minimum of ten hours, and when we consider that when a man, when he comes in off the road, has got to go to his home, have his wife cook him a meal, probably, and then give it an opportunity to digest, if he does not want to lie down like an animal, he can not get into his bed in less than an hour and a half or two hours after he is relieved from duty. Now, the practice is to call them within an hour or two hours before they are needed.

Two hours is an extreme limit; say an hour before they are needed. In that way you will see that the rest that a man would have would be cut down to seven and one-half hours, and I base that on the present practice, because that is the rule now, that a man is entitled to a certain number of hours for rest, and it begins from the time he registers up at the terminal and runs until the time he goes on duty again. Most of the rules between the men and the companies provide that when an employee is called for duty and works any at all he must be paid for a day. If they do not use him a day it is their own fault. They generally do use him a day, so that when a man goes out he always makes his time. There is no reason why he should not have that amount of rest.

Mr. MANN. The Lake Shore and Michigan Southern road, for instance, runs a little suburban train into Chicago in the morning with a train crew. In the afternoon the same train crew runs that train again; but under this bill they could not do that. That train crew does not probably work anything like sixteen hours a day. Adding the lay-off in the morning, it is less than eight hours, or less than ten hours, before they go out in the afternoon.

Mr. FULLER. When runs are arranged in that way the men are considered as going off duty after the first trip.

Mr. MANN. No; they go off duty entirely.

Mr. FULLER. Is it sixteen hours from the time they go on duty in the morning until they quit at night?

Mr. MANN. I do not think it is anything like sixteen hours.

Mr. FULLER. If it is not sixteen hours, this law could not apply to them.

Mr. MANN. Why not?

Mr. FULLER. The purpose of this law is to overcome the exhaustion of men working excessive hours. Now, then, if this law will permit them to put a man out on the road and work continually for sixteen hours, where there is no relief at all, it is very evident that in this case that you speak of, when he is not actually engaged sixteen hours, but is a part of that time at rest, he surely ought to be permitted to work the sixteen hours from the time he begins in the morning until he returns from duty at night.

Mr. MANN. It is our business to provide in the law that——

Mr. SHERMAN. I do not think, Mr. Fuller, that you catch Mr. Mann's point. It is that, having worked three hours in the morning and having gone on duty, they can not then be employed during that same day.

Mr. FULLER. If his work is completed, if his regular assigned run is completed when he goes off duty, then I should say they could not use him again, but in that case it is not completed.

Mr. SHERMAN. It is for the time being.

Mr. FULLER. It is not so considered in the operation of a railroad. He has only performed part of his trip.

Mr. MANN. You are mistaken. He has performed his entire trip.

Mr. FULLER. The duty assigned to that man, if I understand you, is to make two trips. That is his regular stint. Now, then, because he is not continually in the service all that time, actually working, I do not think that that would apply in this case. I think the company could go ahead and work him, and I am sure there would be no complaint about it.

Mr. MANN. That is a question, whether there would be complaint about it or not. He goes off duty. That is a clear thing. Is there not a way of reaching this?

Mr. FULLER. Yes, Mr. Mann. There is a way of reaching it. Instead of making that man lay off between trips they would arrange to have some other run for him and let some other fellow who got in later take the afternoon train out.

When this law is passed the railroad companies will have to adjust the running of these men to comply with the law.

Mr. ESCH. As a matter of fact, with the suburban trains when they get to the outer terminus somebody still keeps in charge of the engine? Does not the fireman in some cases do the wiping, and are they not in continuous service?

Mr. FULLER. Yes; and I understand they come back and the engine is put into the roundhouse.

Mr. RYAN. The heaviest traffic is early in the morning and late in the afternoon, taking the people out and bringing them home again in the evening.

Mr. MANN. That is the same way with the milk trains in Chicago. Under this law they could not do that at all.

Mr. FULLER. You will readily see that the railroad company, probably the one you speak of, Mr. Mann, has hundreds of crews. Lots of these roads out of Chicago run many suburban trains, thick and fast. It is easier for the railroad company to adjust itself to conditions to meet a law than it is for you, gentlemen, to pass a law and try in it to meet all the conditions and objections that will be raised here before you in the consideration of this bill. If you did attempt to meet them, or a small portion of them, the law would be absolutely worthless.

Mr. MANN. You have got to meet these cases. They are not exceptional. Take, for example, the town from which I come. A train crew lives in that town and goes to Chicago in the morning on the morning train and gets to Chicago at 10 o'clock and stays in Chicago during the day laid off until 4 o'clock in the afternoon, when they start a train back. They get home at 8 o'clock at night. They

only have about six hours' actual service in the day. They are paid for a full day's time. They live in the country, where they want to live. They must spend the night there. This law would prohibit that. They could not get back at night. They would have to stay in Chicago at night, simply because they had worked three hours in the day.

Mr. FULLER. I do not think that law could be construed to that extreme view. I want to be fairly understood. I said to the committee that we approached this question with reluctance. Now, we are not so overly anxious for legislation of this sort that we are willing to acquiesce in or submit to a bill that would attempt to meet all these objections that are raised by opponents of this legislation, because in that case it would be worthless. Unless we can have a bill that lays down a practical rule, a reasonable one, which requires the railroad companies to adjust their conditions to it rather than framing it to meet their conditions in detail, I think it would be better to let it alone. That is my honest conviction about it.

Mr. MANN. What I wanted to get at, as I understand it, is the railroad sending out a crew that has been on duty six hours.

Mr. FULLER. Unless you gentlemen can see this in this way, it is useless for you to use your time in the consideration of this question: Is it just and right to the public and the employees that men should be worked excessive hours? That is the first thing to find out. If it is not right, then there should be some reasonable limit as to what is excessive, and they should not be permitted to work above that number of hours. Now, then, if we can not do that, we had better have no law. I say you will find a hundred and one objections to everything that is proposed, and especially with regard to this legislation. But if it is wrong to work these men above the number of hours specified, then I say it is the duty of Congress to say to the railroad companies, "You shall adjust your conditions so that these men will not be required to work excessive hours and endanger their lives and the lives of the public."

Now I say that the safety of these men and the safety of the public is a matter of greater importance than the convenience these railroad companies now have as the result of working the men excessive hours.

Mr. SHERMAN. Your ideas about the results desired to be attained are not different from those of the members of this committee, but the difference is simply in the point of reaching that result. That is all. I am perfectly certain that no member of this committee differs from you in the desire to legislate in such a manner that the men shall not be worked beyond the point of a reasonable strain upon the human system, so as not to harm themselves and endanger the lives of others. Now the simple point is how to get at that.

Mr. FULLER. I have tried to be fair in this. If you listen to the arguments of the other side we will have no legislation. They say we want no legislation; that it is not necessary. Now, I am trying to give the committee all the help that I can, but I think if you want to cure this abuse you will have to lay down a rule and say to the railroad companies: "Gentlemen, the law is bigger than you, and you have got to adjust your conditions to this standard."

Mr. RYAN. The great trouble is with trains on the road, and not on the suburban lines.

Mr. FULLER. We have tried to meet that. When casualties occur after the men have started on their trips, they can go to their terminals.

Now, section 3 of this bill brings up the question of giving the Interstate Commerce Commission the authority to reduce the number of hours. We did go in with the Commission on the first bill. They agreed to a proposition to let them lay down a rule. It was thought not proper to do that by members of this committee, and we backed away from that proposition. Now, since we dropped that idea we would prefer that you lay down a rule, and that the Commission should have nothing to do with it except to enforce it. I think that is right.

Mr. MANN. You seem to assume that all these objections are objections made by the railroads. So far as I am concerned, I represent a locality that relies very largely on the Illinois Central Railroad to get down to business in Chicago, and you would simply wipe those trains off the face of the earth. Those people are just as much interested in this matter as the train men are.

Mr. FULLER. But they do not want any legislation, we know.

Mr. MANN. They do not want any legislation that will prevent their getting to the city.

Mr. FULLER. The railroads are opposed to this legislation.

Mr. MANN. I am not talking about the railroad companies. You are thinking that everybody who is talking about objections to this bill refers to the railroad companies.

Mr. FULLER. I was not speaking with regard to you. I was referring to the opponents of this legislation. I referred to the other side.

Mr. MANN. I understand.

Mr. FULLER. Another thing: This first bill provides only a penalty of $100. The safety-appliance law has a penalty of only $100, and they are violating it in hundreds and thousands of cases; and, as I said before, if we hope to get any legislation that is effective, we have got to have some restraint put upon these companies, and I can no better express the effect of a $100 penalty than by reading to you two or three lines of what Judge Payson said before this committee on this particular subject on May 1, recorded on page 51 of your hearings. After being questioned by Representative Richardson, Mr. Payson said:

> I don't think such legislation would be any additional incentive to a railroad company to make additional regulations with reference to the management of the railroad than are in force to-day, because certainly a penalty of a hundred dollars visited on a corporation, looking at it simply from that side, would not amount to very much in dollars and cents.

That expresses it to a T. One hundred dollars fine is nothing in the eyes of a railroad. Both Houses of Congress have passed a bill—the rate-regulation bill—which makes the penalties and fines $5,000. They would fine a member of the Commission or an employee of the Commission $5,000 for giving out any information.

They would fine the railroads thousands of dollars for violations of regulations with regard to rates. Here is a thing in the interest of life and limb. The Interstate Commerce Commission want a $100 fine, and we want a $1,000 fine, and we think it right that it should be a thousand dollars.

Mr. CUSHMAN. Are you through with that particular phase of the subject?

Mr. FULLER. Not quite, yet. I will be through in a minute. At the bottom of page 3 of that bill—bill 18671—the proviso reads:

Provided, That the provisions of this act shall not apply in any case where, by reason of unavoidable or unforeseen train accident or act of God occurring after such employee has left a terminal, he is prevented from reaching his terminal within the time specified in section 1 of this act.

Our bill provides for casualties that occur after a man has started on his trip; that is, as applied to the maximum number of hours which he shall work; but there is no relief in this bill as to the amount of hours that they shall give him when he comes in off the road. This would not only permit them to work him over sixteen hours in such cases, but permit them to make him go on duty when he came off the road, without sufficient time to rest.

Mr. STEVENS. What bill is that?

Mr. FULLER. This is the bill 18671, at the bottom of page 3. Again, the words "unavoidable or unforeseen train accident" are too broad. It is a question of from what standpoint it is going to be considered "unavoidable."

Mr. ESCH. You use in your bill the word "casualty?"

Mr. FULLER. The word "casualty;" yes. We take it from the State statutes. It covers all these things properly. It is a thing that is unforeseen. It is a better word, in our opinion.

Mr. RICHARDSON. You suggest the substitution of the word "casualty" for "unforeseen and unavoidable accident?"

Mr. FULLER. Yes; for "unforeseen and unavoidable accident." The term "unavoidable accident" is susceptible of too broad interpretation.

Mr. RICHARDSON. I admit it is susceptible of a great deal of diverse interpretation. "Unforeseen" is a different word.

Mr. FULLER. "Casualty" is a thing that is naturally unavoidable.

Mr. CUSHMAN. Are you through with that branch?

Mr. FULLER. Yes, sir.

Mr. CUSHMAN. I want to ask you a question or two about this penalty provision. Do I understand that, in your judgment, any penalty which this bill provides for the violation of the law should go wholly to the carrier, to the railroad, and not to the men?

Mr. FULLER. That is my personal opinion, and the question has been submitted to the officers of our organization, and I tell you frankly that we are opposed to penalizing the men.

Mr. CUSHMAN. Do you not think there is some force in the suggestion made by the chairman, that if a penalty attaches to the men as well as the railroad their hands would be strengthened?

Mr. FULLER. No; I do not. I think it would put into their hands a means of violating the law.

Mr. CUSHMAN. In what way?

Mr. FULLER. In the first place, we are against it on principle. The railroad company is the common carrier which does the business for the public under the authority of Congress, and it has to take that responsibility and look for the safety of travel; the employees are not charged with it. The question of the action of employees is something for the carrier to take care of. They should be responsible for that.

Mr. KENNEDY. If the company should order a man to go out and he should acquiesce, he would become guilty with the company, and therefore could not complain?

Mr. FULLER. If you put that provision in the bill, I can see that this might be the condition: A railroad company might have a turn run, and their schedule might be, say, sixteen hours or fifteen hours without any delay; that is, run a man out to a certain point and back to his home. Now, if the rule was laid down that they could not work that man above sixteen hours, they would see to it that he was given a proper train, a train not with excessive tonnage, so that he could get in. They would make their schedules shorter.

Mr. CUSHMAN. What has that got to do with the penalty?

Mr. FULLER. Now, if you put in a penalty against a man, the railroad company can get a man within a few miles from his home. That is the temptation to the men that often leads to working excessive hours. We can not blame them. A man is, say, within 8 or 10 miles from his home. He is faced by a violation of the law on the one hand and being kept away from his home on the other. The railroad company knows it is safe, under these circumstances, to run him on to the terminal, because he has got to keep his mouth shut. Otherwise the railroad companies will have to adjust their runs so as to get the men in within the prescribed limit.

Mr. CUSHMAN. Now, Mr. Fuller, in the proposition of the passage of this bill, if the penalty should be changed, as has been talked about, that would be a law which would make it unlawful when the act itself should be committed practically by two parties; that is, the party representing the railroad ordering the man out, and the party accepting the order constituting the other party. Now, do you think, as a matter of general equity, that we ought to make an act committed by two people a crime as to one and nothing as to the other?

Mr. FULLER. I can offer no better argument on that than the argument I presented to show where the present agreements were violated. One great trouble about this is that, even after you pass a law, there would be some men—not the majority—who would still like to work, and the company may influence them to work.

Now, they have got to keep their mouths shut, if they are penalized, and they will. Now, here comes a fellow in who wants rest, and he knows if he objects the other fellow behind him, who has got the name of working excessive hours, will do it, and he will be put down as a kicker, just as it has worked now under an agreement—under an agreement now that these men shall not be required to work an excessive number of hours. It is the desire of the railroads and officers to work the men excessive hours under certain conditions, and certain of the men want to do it.

The fellow who wants to do the right thing is coerced into working an excessive number of hours, and you would not only penalize the fellow who at heart would do wrong in this case, but also the fellow who, under force of circumstances, is compelled to violate the law unwillingly. No manager is going to put up with a man in his service very long if he goes around sticking the law up in front of him and saying, "Here is the law. This makes it a crime to do such and such."

Supposing there was a good run to go out, where a man would not be gone long—and there are those good runs on most roads; for instance, a stock train—and to get that run to its destination involves an infraction of the law. The men inclined to work excessive hours would accept that run, because they can see a preference there and a benefit. Suppose they want men to go out on another run, and one of the men sticks the law up at them. That is not good from the standpoint of discipline, and I do not think it is right from the standpoint of discipline to put a thing like that into a man's hands to enable him to do just as it suits him and affect other men thereby.

You can not get prosecutions under such a law. In my mind it will be much harder to enforce this law if there is a penalty put upon the man in addition to the company.

Mr. CUSHMAN. Why will it be harder?

Mr. FULLER. Because they will both keep their mouths shut.

Mr. CUSHMAN. Is it not a fact that the railroad men you represent will make an effort in good faith to enforce the law?

Mr. FULLER. Yes.

Mr. CUSHMAN. Do they want to evade the responsibility put upon them and put it all upon the railroads?

Mr. FULLER. No; but they are not willing to put their heads into a noose and be penalized for something that the employer is absolutely responsible for. The employer is the one who makes the conditions. He knows when every man gets in from the road, and when he goes out; and if he does not know it, he ought to.

Mr. CUSHMAN. This law is to prevent the employer from creating the condition—a wrong condition?

Mr. FULLER. Yes; but if he does create that condition by this proposition you want to penalize the man along with him.

Mr. CUSHMAN. The condition is created by the two parties.

Mr. FULLER. No; it can not be created unless the responsible party, the common carrier, wants it done. The railroad is not going to run trains and work men excessive hours unless it has a motive for doing it.

Mr. ESCH. Are these parties on an equal footing?

Mr. FULLER. No, sir; they are on an entirely different footing. They are unequal.

Mr. ESCH. If you penalize the men and prosecute the case, could not the railroad employee plead immunity?

Mr. FULLER. I think so.

Mr. ESCH. Then how could you convict?

Mr. FULLER. If an inspector of the Interstate Commerce Commission was around seeking evidence of the violation of this law he would go to the employees, and there is where he would have to go to get information, or get a line on it, as to what was going on. The employee would keep his mouth shut, and he could not get any information out of him. As it is now, they get a whole lot of information in regard to the violations of the safety-appliance law from the employees. They have got to get it from them. But if those employees were penalized—and that was suggested here before this committee in the consideratioin of the saftey-appliance act, that the employees should be penalized also for the violation of the act—they could not get the information.

Mr. BARTLETT. It is not uncommon in the State statutes to find

cases where one man who is party to a crime is punishable and another is not. Take the law forbidding the selling of liquor to minors, for example.

Mr. WANGER. Mr. Fuller, do you not think the telegraphers are on a very different footing, where they have an opportunity to go on duty without knowledge of the station master?

Mr. FULLER. They do not go on duty without the knowledge of the station master.

Mr. WANGER. Can not a telegrapher continue on?

Mr. FULLER. No; the train dispatcher who has charge of them knows every man's call. He knows his initials, and if he is used to the men he knows whether or not it is bogus. It was suggested here that the railroad in Colorado on which a wreck occurred had no means of knowing that the day operator was on duty, and had no means of knowing the number of hours he had been on duty. I say it had the means.

Mr. WANGER. You mean it might have had?

Mr. FULLER. Certainly; and the facts have never been known in regard to that wreck. This committee, I believe, asked for copies of that report.

Mr. MANN. Supposing a train crew was out on the road and the sixteen-hour limit expired before they returned. If they continued on duty, of course under this provision it would penalize the company. I apprehend if they should continue on duty without direction it would be difficult to convict the company. But suppose the company should give them to understand that it was their business to run through, but gave them no specific direction to that effect?

Mr. FULLER. You can not work a man on a railroad without direction. The company knows where he is every minute.

Mr. MANN. The company does not know where he is on these little roads. They know between what telegraph stations he may be, but that is all.

Mr. FULLER. That is close enough. They know what time that crew started on duty, and they know when their sixteen hours are up.

Mr. MANN. That is true of the Pennsylvania Railroad Company, but it is not true of the railroads of the West.

Mr. FULLER. A crew on a railroad can not work on their own motion. The company must order them.

Mr. MANN. The company orders them to begin that?

Mr. FULLER. Yes; and they order them to begin and continue that trip. They are supposed to take their train to a destination, unless they get orders to do otherwise. That can not be gotten around in any other way, Mr. Mann.

Mr. MANN. I do not see how you can do that unless you forbid employees to do the work when the company has a man out on the line.

Mr. FULLER. You mean to provide a penalty?

Mr. MANN. In some way do something.

Mr. FULLER. The company has just as much control over that man when he is out on the line as when he starts at the terminal. They have got charge of the train. A train can not move without their knowing it. Their telegraph operators at every station report to the train dispatcher at what time the train passes.

Mr. MANN. The train might be two hours at a telegraph station, and often, as in the West, they continue on duty at the end of that time.

Mr. FULLER. It is because of the conditions of employment that they do that. They are carrying out their orders or instructions when they get into that condition.

Mr. CUSHMAN. Just a moment, Mr. Fuller. The latter clause of the bill H. R. 18961, being your bill, provides—

> That to enable said Commission to execute and enforce the provisions of this act it shall employ such inspectors or other persons as may be necessary, and its agents or employees thereunto duly authorized by order of said Commission shall have the power to administer oaths, interrogate witnesses, take testimony, and require the production of books and papers. The Commission may also order depositions taken before any officer in any State or Territory of the United States or the District of Columbia qualified by law to take the same.

What is the idea of the necessity of these inspectors?

Mr. FULLER. I am glad you spoke of that, because I overlooked it. That is the thing I wanted to speak to the committee about. That was in the bill first agreed to by the Commission, and we would like to have it continued in this bill.

Mr. CUSHMAN. For what purpose?

Mr. FULLER. For the purpose of getting information.

Mr. CUSHMAN. As a matter of fact, is not this information as to any violation of this law in the possession first-hand of the railroad employees? That is, if you had only a dozen or twenty inspectors they could not cover the United States, but they could only be in a few places, whereas if this bill is enacted into law and it is violated by the railroad companies in any part of the United States the railroad employee working at the place where the law is violated, who knows of that violation, has that information at first-hand?

Mr. FULLER. If he is a man whom they caused or permitted to work excessive hours, he would know it.

Mr. CUSHMAN. Yes; and there might be no inspector there?

Mr. FULLER. Yes; and the company knows it just as well as he does.

Mr. CUSHMAN. And as a matter of fact, is not the information about the violation of this law more fully in the possession of the man than it could possibly be in the possession of any reasonable number of inspectors?

Mr. FULLER. No, sir. Let me tell you. Each crew dispatcher that handles the men, the crews on the railroad, has a book. In that book the men register when they go out or report for duty. When they get back in, they come and register again. You can tell by that book whether the crews worked excessive hours. These inspectors can get that information off of that book, and we want to give them the authority to do that.

Mr. CUSHMAN. The men have this information at first-hand when the entries are made in the book. The entries in the book are only presumptive evidence, while the facts in the possession of the men are absolute evidence. If there was no other evidence obtainable, the evidence in the books would be taken, but in a criminal case you can not take what somebody has written in a book and substitute that for knowledge actually in the possession of a man.

Mr. FULLER. Suppose an employee dislikes, lots of times, to say anything about a violation of the law?

Mr. CUSHMAN. That is the point I wanted to get at.

Mr. FULLER. And in the event an inspector tries to get such information from such a man and can not get it he can go to these registry books and get a line on what has happened. Then these men can be called into court to testify.

Mr. CUSHMAN. Is there not a disposition on your part and on the part of these men to attempt to place the responsibility on the company and at the same time evade responsibility which should properly attach to the men?

Mr. FULLER. No, sir. A penal provision should not properly attach to the employee.

Mr. CUSHMAN. Why would it be wrong to place the responsibility on the men as well as on the company?

Mr. FULLER. If you had been a railroad employee yourself and had been through the experience of railroad men for years, you would understand——

Mr. CUSHMAN. I have worked on a railroad, Mr. Fuller.

Mr. FULLER. Have you ever worked in train service?

Mr. CUSHMAN. No, sir; I have not.

Mr. FULLER. You would find about the time you squealed once or twice—you would find it unpleasant to remain in the service of that company, if you were not dismissed from it entirely. This committee put a provision in the rate bill that gave the Government the authority to examine the books and papers of railroads with regard to rates. That has passed the Senate. It is for the purpose of finding out whether they are doing right or not.

Mr. CUSHMAN. That is a vastly different proposition.

Mr. FULLER. Yes; that is a question of dollars and cents. This is a question of safety to life and limb.

Mr. MANN. There is this difference about it, as far as the criminal code is concerned, that there is no immunity provision in this, and you could not require an official of the railroad company there to produce books in court or allow an inspector to examine the books, because that would render him criminally liable under this law.

Mr. FULLER. I am not a lawyer, but I can not see how they can call for the books with regard to rates and not be permitted to do so in a case of this kind.

Mr. MANN. If you were a lawyer, you would readily see; or if you had examined the bills, you are lawyer enough to know——

Mr. FULLER. I wish I was a lawyer, because I have to run up against lawyers so often that I would feel more competent to answer questions if I had more knowledge of law; but as to the justice of it, I can not see why they can not call for the books in regard to this as they can do with regard to rates.

Mr. MANN. There is an immunity provision under the interstate-commerce act, but there is no immunity provision under this act. You make the train dispatcher criminally liable here, and you could not require him to show these books unless you gave him immunity from prosecution.

Mr. FULLER. The book is not always in the hands of the man who violates the law. You can go to the superior officer of that fellow and ask him for that book, and he would have to show it. The

train dispatcher is only the custodian of the book when it is in use. You can get it from another officer. I do not understand why it is incriminating to the other officer if he did not order him to do this, if the train dispatcher is to blame.

Mr. GAINES. Mr. Fuller, let me suggest a case now. So far as I am concerned, I will say to you I believe that the man ought not to work excessive hours, and that the public should not be subjected to that danger, if it can be reached; but I do not like the idea of one-sided legislation.

It does not address itself to my sense of fairness. Now, you take the case of a telegraph operator. The day man is on at night. Suppose you ask him where the other man is. He says he is ill. It may not be true. It may be another case where he is taking that man's place to let him go to a dance, as in the Colorado case the other day.

Mr. FULLER. I do not know anything about the Colorado case. The reports that should be here in compliance with the law are not here. If you are going on suppositions, I would like to cite something I heard about the Colorado case. I understood the train dispatcher knew that man was away, and the night operator told him he was sleepy and wanted him to send a man on a certain train to relieve him, and he did not, and he told him again, and he promised, but did not send the man.

Mr. GAINES. In such cases the guilty party should be prosecuted and convicted. Now, suppose that happened; you make that person custodian of those books. He generally does now—he in most cases ought to know, but in some cases does not actually know, how long a man has been actually off, and guilty. It would relieve from any conviction a man who certainly must know that he has violated the law.

Mr. FULLER. I do not think you have stated the case properly. I say this, that a railroad company or the man in charge of the men does know, or at least has the opportunity to know, and ought to know, when each man goes on duty and when he is relieved. He knows just as well as the man himself.

I submitted here a copy of a circular letter from the general manager of the Chicago and Northwestern Railroad, in which he went into details, telling them how to do this very thing.

Have you any other questions, Mr. Chairman?

The CHAIRMAN. I believe not.

Thereupon, at 11.45 o'clock a. m., the hearing was concluded, and the committee went into executive session.